

XLII. And be it enacted, That nothing in this Act shall be construed to prevent the issuing of any General or Special Commission of Oyer and Terminer or of General Gaol Delivery, for any District, City or place, or to derogate from, abridge or affect any right or prerogative of the Crown not herein expressly mentioned.

Rights of the Crown saved.

XLIII. And be it enacted, That all Acts or Enactments or Provisions of Law inconsistent with this Act shall be and are hereby repealed.

Repeal of former Acts, &c. inconsistent herewith.

XLIV. And be it enacted, That the Interpretation Act shall apply to this Act.

Interpretation Act to apply.

XLV. And be it enacted, That the foregoing sections of this Act shall come into force and effect, upon, from and after the day which shall be appointed for that purpose in any Proclamation to be issued by the Governor of this Province, by and with the advice of the Executive Council thereof, and not before, except in so far as it may be herein otherwise provided: and upon, from and after the said day, any Judge or Officer then appointed under this Act, shall and may perform all or any of the duties or functions of his office although the Court hereby established may not have met or sat.

Commencement of this Act, &c.

C A P. XXXVIII.

An Act to amend the Laws relative to the Courts of Original Civil Jurisdiction in Lower-Canada.

[30th May, 1849.]

WHEREAS it hath become expedient to reform the Judicature of Lower-Canada, and by an Act of this present Session, provision hath been made for the establishment of a Court of Appellate and Criminal Jurisdiction for that part of this Province, and it is necessary to remodel the several Courts of Original Civil Jurisdiction: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, intituled, *An Act to re-write the Provinces of Upper and Lower-Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That the Act passed in the seventh year of Her Majesty's Reign, and intituled, *An Act to repeal certain Acts and Ordinances therein mentioned, and to make better provision for the Administration of Justice in Lower-Canada*,—and the Act passed in the ninth year of Her Majesty's Reign, and intituled, *An Act to amend the Law relative to the Administration of Justice in Lower-Canada*,—and all other Acts and Provisions of Law inconsistent with this Act, shall be and are hereby repealed: except that neither the repeal of the Acts above cited and repealed, nor any thing herein contained, shall extend to abolish the Circuit Court at any place or the office of any Circuit Judge, except as it is hereinafter provided; And provided always, that the repeal of the said Acts shall not be construed to revive any Act or Provision of Law thereby repealed, all which shall nevertheless remain repealed, and the Courts and Jurisdictions thereby abolished shall remain abolished.

Preamble.

Acts 7 V. c. 16, and 9 V. c. 29, repealed.

General repeal/Exception.

Proviso: Laws repealed by the Acts hereby repealed not to revive.

II. And be it enacted, That the several Courts of Queen's Bench or King's Bench in and for the several Districts in Lower-Canada, and the offices of Resident Judge of the

Present Courts of Queen's

Bench, &c., abolished. the District of Three-Rivers, and of Provincial Judge of the District of St. Francis, shall be and the said Courts and Offices are hereby abolished.

Superior Court established. III. And be it enacted, That there shall be and there is hereby established, in and for Lower-Canada, a Court of Record of Civil Jurisdiction for Lower-Canada, to be called the "Superior Court;" which Court shall consist of ten Judges, that is to say, of a Chief Justice and nine Puisné Judges, to be appointed from time to time by Her Majesty, Her Heirs and Successors, by Letters Patent under the Great Seal of this Province; and four of the said Judges shall reside at the City of Montreal, four at the City of Quebec, one in the Town of Three-Rivers, and one in the Town of Sherbrooke.

How constituted.

Residence of the Judges.

Who may be appointed a Judge.

IV. And be it enacted, That no person shall be appointed a Judge of the said Superior Court, unless he shall immediately before his appointment be a Justice of one of the said several Courts of Queen's Bench, or a Circuit or District Judge, or an Advocate of at least ten years' standing at the Bar of Lower-Canada.

Provisions of the Judges' independence Act 7 V. c. 15, to apply.

V. And be it enacted, That all the provisions of the Act passed in the seventh year of Her Majesty's Reign, and intituled, *An Act to render the Judges of the Courts of King's Bench, in that part of this Province heretofore Lower-Canada, independent of the Crown*, shall apply to the Judges of the said Superior Court as fully as if they had been specially named therein; and that no such Judge shall sit in the Executive Council or in the Legislative Council, or in the Legislative Assembly, or hold any other place of profit under the Crown, so long as he shall be such Judge.

General jurisdiction of the S. Court.

VI. And be it enacted, That the said Superior Court shall have Original Civil Jurisdiction throughout Lower-Canada, with full power and authority to take cognizance of, hear, try and determine in the first instance and in due course of law, all civil pleas, causes and matters whatsoever, as well those in which the Crown may be a party, as all others, excepting those purely of Admiralty jurisdiction, which shall be and remain subject to that jurisdiction, and excepting also those over which original jurisdiction is hereinafter given to the Circuit Court.

Exception.

Superintending and reforming power over other Courts, &c.

VII. And be it enacted, That excepting the Court of Queen's Bench, established as aforesaid, by an Act of this Session, all Courts and Magistrates, and all other persons, and bodies politic and corporate within Lower-Canada, shall be subject to the superintending and reforming power, order and control of the said Superior Court and of the Judges thereof, in such sort, manner and form as Courts and Magistrates and other persons, and bodies politic and corporate, in Lower-Canada, shall immediately before the time when this Act shall come fully into effect, be subject to the superintending and reforming power, order and control of the several Courts of Queen's Bench, and of the Judges thereof, in term and in vacation; and such superintending and reforming power and control are hereby vested in and assigned to the said Superior Court, and the Judges thereof: and all appeals and evocations from any inferior Court or jurisdiction which immediately before the said time shall lie to any one of the said several Courts of Queen's Bench, or the Judges thereof, shall thereafter lie to the said Superior Court, or the Judges thereof, unless it be otherwise provided by this Act or by some Act of this Session.

As to appeals and evocations to former Courts of Q. B.

VIII. And be it enacted, That all and every the powers, authorities and jurisdictions in pleas, causes, matters and things of a civil and not criminal nature, of what kind soever, which immediately before the time when this Act shall come fully into effect, shall be by law vested in and required to be exercised by the several Courts of Queen's Bench in the several Districts of Lower-Canada as then constituted, or any or either of them, and in and by the several Justices of the said Courts, or any or either of them, as well in term as in vacation, (excepting always such of the said powers, authorities and jurisdictions as shall by this Act or any other Act of this Session be vested in any other Court), shall from and after the time when this Act shall come fully into effect, become and be vested in the said Superior Court hereby established, and shall and may be as fully and effectually exercised by the said Superior Court, and the Judges thereof severally and respectively, as well in term as in vacation, as the same might have been exercised and enjoyed by the said Courts of Queen's Bench, and any or either of them, and the several Justices thereof or any or either of them, in term or in vacation, if this Act had not been passed.

Powers of Q. B. in civil matters transferred to S. Court.

Exception.

IX. And be it enacted, That all and singular the laws which shall be in force in Lower-Canada immediately before the time when this Act shall come fully into effect, to govern and direct the proceedings and practice of the several Courts of Queen's Bench in the several Districts of Lower-Canada, in the exercise of those jurisdictions and powers of the said Courts which are hereby transferred to and vested in the Superior Court, and which are not repealed or varied by this Act, or inconsistent with the provisions thereof, shall continue to be in force and be observed in and by the said Superior Court, in the exercise of the jurisdictions and powers aforesaid.

What laws shall govern the exercise of the powers of the Court.

X. And be it enacted, That for the purposes of the administration of Justice, Lower-Canada shall continue to be divided, as it now is, into the Districts of Quebec, Montreal, Three-Rivers, St. Francis, and Gaspé, the boundaries whereof shall remain as they now are: except that the Counties of Kamouraska and Rimouski shall together form a new District by the name of the *District of Kamouraska*, upon, from and after the day to be appointed for that purpose in any Proclamation to be issued by the Governor, appointing such day, and declaring that a proper Gaol and Court House for the said new District have been erected at Kamouraska, in the said District: And that the County of Ottawa shall form a new District, by the name of the *District of Ottawa*, upon, from and after the day to be appointed for that purpose in any Proclamation to be issued by the Governor appointing such day, and declaring that a proper Gaol and Court House for the said District have been erected at Aylmer, in the said District, and the tract of land forming such new District shall thereafter cease to form part of the District of Quebec or of Montreal, as the case may be.

Districts to remain as they now are.

Exception.

Two new Districts to be formed when certain conditions are complied with.

District of Kamouraska.

District of Ottawa.

XI. Provided always, and be it enacted, That notwithstanding any such Proclamation as aforesaid, all suits, actions and proceedings in or before the said Superior Court, or any other Court, civil or criminal, commenced before the day appointed in such Proclamation as that upon, from and after which either of the said new Districts is to be established, shall, as shall also all matters and proceedings incident or relative thereto, or dependent thereon, be continued, completed, dealt with and considered as if the new District established by such Proclamation had not been detached from the District of Quebec or of Montreal, as the case may be.

Proviso as to suits, &c., pending when either of the new Districts is formed.

XII.

Sheriffs and Prothonotaries to be appointed in the new Districts when formed.

Proviso: such Officers need not be re-appointed for the old Districts by reason of this Act.

But they shall be the Officers of the S. Court generally, and not merely of the Judges sitting in one District.

Prothonotaries may appoint Deputies.

Certain other Officers to be appointed in the new Districts.

Sessions of the Peace to be held therein.

Who shall hold such sessions.

Circuit Judges when in Gaspé, to be Judges of S. Court, for certain purposes.

And to have certain powers, out of Term in Kamouraska and Ottawa.

Proviso as to the effect out of such Districts of their judicial acts therein.

XII. And be it enacted, That after the issuing of the said Proclamation with regard to either of the said new Districts, a Sheriff may be appointed for such new District, and shall have in and with regard to the same, like powers and duties, and shall be subject to like liabilities, with the Sheriff of any other District; and a Prothonotary of the Superior Court may be appointed in and for such new District, and shall have in and with regard to the same like powers and duties, and shall be subject to like liabilities with the Prothonotary of the said Court in any other District: but nothing in this Act contained shall make it necessary that a Sheriff or a Prothonotary of the said Court be appointed in any one of the present Districts, merely by reason of the passing of this Act, but the Sheriff of each such District shall remain the Sheriff thereof, and the Prothonotary of the present Court of Queen's Bench therein shall be and remain and be called the Prothonotary of the Superior Court for such District, without any new appointment, until such Sheriff or Prothonotary shall die, resign or be removed from office, in which case a successor shall be appointed; but each such Sheriff or Prothonotary shall be the Officer of the Superior Court generally, and not merely of the Judges sitting or acting in his District, and shall accordingly obey the lawful orders of the said Court and of the Judges thereof in whatever District such orders be made, provided any thing be required to be done under it by such Sheriff or Prothonotary in his District: And any Prothonotary of the Superior Court whether appointed before or after this Act shall come into effect, may from time to time appoint by an Instrument under his hand and seal, a Deputy who shall have power to perform all the duties of the office in case of the absence or sickness of such Prothonotary, and such Instrument shall be entered at full length in the Register of the Court: And in and for each new District when so constituted by proclamation, a Clerk of the Crown, Clerk of the Peace, Coroner, Gaoler, and other proper Officers shall be appointed, as in the other Districts, and shall have like powers, duties and liabilities with Officers of the same name in other Districts: And General and Special Sessions of the Peace shall be held therein, the said General Sessions being held at such times as shall be appointed by the Governor, in and by the Proclamation aforesaid, in like manner and with like powers and duties as in other Districts; and the Justices of the Peace for the District from which the new District shall be detached then resident in such new District, shall, without any other Commission, be Justices of the Peace for such new District, but shall cease to be so for the remainder of the District from which it shall be detached.

XIII. And be it enacted, That each of the Circuit Judges when in the District of Gaspé, shall be held to be a Judge of the Superior Court, but in so far only as relates to Terms or Sittings of the Court in the District of Gaspé, and to judicial acts to be done in the said District; and that each of the Circuit Judges for Lower-Canada, when in the District of Ottawa when Terms of the Superior Court shall be held therein, or in the District of Kamouraska when Terms of the Superior Court shall be held therein, shall at all times, except during any Term of the Superior Court in such District, have and exercise all the powers vested in any one Judge of the said Superior Court, and which might be exercised by him out of Term in such District: Provided always, that the limitations made in this section shall not impair or derogate from the effect, out of the said Districts, respectively, of any process, judgment, order or judicial act issued, rendered, made or done in the said Districts, respectively, by the Superior Court in the District of Gaspé, or by the said Circuit Judges or of any of them in any of the said Districts, as Judges or as exercising the powers of Judges, of the Superior Court, but such effect shall be governed by the general provisions of this Act in similar cases.

XIV.

XIV. And be it enacted, That terms and Sittings of the Superior Court, and of the Judges thereof, shall be held at the places hereinafter mentioned, in each of the Districts into which Lower-Canada is or may be divided: And all actions, suits, or proceedings may be commenced at the place where the terms of the said Court are held in any District, provided the cause of such actions, suits or proceedings respectively, shall have arisen within such District, or the defendant or one of the defendants, or the party or one of the parties, to whom the original Writ, Order or Process shall be addressed, shall be domiciled or served personally with such Writ, Order or Process within such District, and that all the Defendants or parties aforesaid, be legally served with Process, and not otherwise, except where any of the said Defendants or parties shall be summoned by advertisement as hereinafter mentioned.

Where the Terms of the S. Court shall be held.
In what district any action in the S. Court may be commenced.

XV. And be it enacted, That the terms of the Superior Court in each of the said Districts, shall be held by not more than three nor less than two of the Judges of the said Court; and in term any two of the said Judges shall form a Quorum, and may exercise all or any of the powers of the Court, but if they be divided in opinion on any matter, such matter shall stand over for future decision; and in the said Court, the Chief Justice shall preside, or if he be not present, then the Puisné Judge entitled by his Commission to precedence in the Court.

Who shall hold the Court.
Quorum.
Equal division.
Who shall preside.

XVI. And be it enacted, That Terms of the Superior Court shall be held at the times hereinafter mentioned in each and every year, and at the places also hereinafter mentioned, that is to say:

Times of holding the Terms of the S. Court.

At the City of Montreal, in and for the District of Montreal, from the first to the twentieth of April; and from the first to the twentieth of September; and from the first to the twentieth of December;

At Montreal.

At the City of Quebec, in and for the District of Quebec, from the first to the twentieth of April; and from the first to the twentieth of September; and from the first to the twentieth of December;

At Quebec.

At the Town of Three-Rivers, in and for the District of Three-Rivers, from the twelfth to the twenty-fifth of February; from the first to the fourteenth of June; and from the first to the fourteenth of November;

At Three-Rivers.

At the Town of Sherbrooke, in and for the District of St. Francis, from the twentieth to the thirty-first of January; and from the sixteenth to the twenty-seventh of July;

At Sherbrooke.

At Percé and New Carlisle, in and for the District of Gaspé, viz., at Percé, from the twenty-first to the thirtieth of August, inclusively, and at New Carlisle; from the fourth to the thirteenth of September, inclusively, but the sittings at the two places forming only one Term;

In Gaspé.

And the days from and to which any Term is herein directed to be held, shall in all cases be both included in such Term;

Days to be reckoned inclusively.

At

In District of
Kamouraska.

At Kamouraska, in and for the District of Kamouraska, commencing on such two days respectively as shall be appointed by the Governor in the Proclamation hereinbefore mentioned to be in that behalf issued, and on the nine days next after such two days respectively, or such of them as shall be juridical days;

In District of
Ottawa.

At Aylmer, in and for the District of Ottawa, commencing on such two days respectively as shall be appointed by the Governor in the Proclamation hereinbefore mentioned to be in that behalf issued, and on the nine days next after such two days respectively, or such of them as shall be juridical days:

Provido: the
Court may pro-
long any
Term.

What Judges
shall ordinari-
ly go to hold
the Court in
Gaspé.

Provided always, that the Court shall have full power to continue any Term, in any of the said seven Districts, beyond the time herein fixed for its continuance, by any Order to be made for that purpose during such Term: And provided also, that it shall be the duty of the Judges of the Superior Court residing at Quebec, ordinarily to assist in holding the Terms of the said Court in the District of Gaspé, but this shall not prevent any other Judges from so doing if circumstances shall require it.

Weekly sit-
tings of the
Court at Que-
bec and Mon-
treal for certain
purposes.

XVII. And be it enacted, That in the Districts of Montreal and Quebec, out of Term, upon the first two juridical days in each week, in every month except August, the Court or any Quorum thereof, may hold sittings for the purpose of giving judgment in cases theretofore heard and taken *en délibéré*, and of hearing and giving judgment in cases by default or *ex-parte*, including cases of application for judgment of confirmation of title to immoveables, where there shall be no opposition or the oppositions shall be admitted by all parties, and of hearing and giving judgment in any case appealed, evoked or removed from any Circuit Court, or brought in the Superior Court, (as hereinafter provided,) because a Circuit Judge is a party thereto, but of which, from its nature or the amount in dispute, the Circuit Court would otherwise have cognizance, and may, in any case, hear and give judgment upon all issues of law raised upon demurrers or pleadings, and all motions, rules and incidental matters; but with the consent of all parties, any case may be heard upon the merits and determined at such sittings.

Any case may
be heard by
consent of
parties.

Jurisdiction of
S. Court con-
fined to certain
cases.

XVIII. And be it enacted, That the Superior Court shall, as aforesaid, take cognizance of all suits or actions (those purely of Admiralty jurisdiction excepted) which shall not be cognizable in the Circuit Court hereinafter mentioned, or which shall be evoked or otherwise removed from the said Circuit Court, or from any other Court or Jurisdiction, into the said Superior Court, and of such suits or actions only, unless in any case it be otherwise provided by this Act, and excepting always such suits, actions or proceedings as shall be pending in Superior Term in any one of the several Courts of Queen's Bench immediately before the time when this Act shall come fully into effect, and which shall be transferred to and shall subsist, depend and be continued in the Superior Court at the same place, as hereinafter directed.

Exception as
to suits, &c.,
pending in Q.
B. and trans-
ferred to S.
Court.

Form and
style of Writs
and Process.

XIX. And be it enacted, That all Writs and Process to be issued out of the Superior Court shall run in the name of Her Majesty, Her Heirs or Successors, and shall be sealed with the Seal of the said Court, and signed by the Prothonotary for the District in which they shall issue, whose duty it shall be to make out and prepare the same; and they shall not be tested in the name of any Judge, but the words "in witness whereof" "we have caused the Seal of our said Court to be hereunto affixed," shall be instead of such

Not to be tes-
ted in the
name of a
Judge.

such *teste*: Provided always, that no such Writ or Process shall be deemed void or voidable by reason of its having a wrong seal or no seal thereon; And every such Writ or Process may be either in the English or in the French language, any law, custom or usage to the contrary notwithstanding: and if any affidavit be required before the issuing of any such Writ or Process, the Prothonotary shall have full power to receive such affidavit, and to administer the necessary oath: Provided also, that this shall not be construed to prevent any Judge of the Court from receiving such affidavit and administering such oath if he shall think fit.

XX. And be it enacted, That all Writs of Summons issuing out of the Superior Court, except Writs of *Capias ad Respondendum*, *Saisie-Arrêt* before judgment, *Saisie-Gagerie*, or *Saisie-Revendication*, shall be directed to and executed and returned by any of the Bailiffs of the said Court appointed for the District in which the Writ shall issue, any law or custom to the contrary notwithstanding; but where any such Writ shall be to be executed, wholly or in part, in any District other than that in which it shall issue, then, whether it be a Writ of Summons, or a Writ of *Capias ad Respondendum*, *Saisie-Arrêt* before judgment, *Saisie-Gagerie*, or *Saisie-Revendication* it shall (except those cases in regard to which other provision is hereinafter made) continue to be directed to and executed and returned by the Sheriff of the District in which it is to be executed, as heretofore; and when any such Writ of Summons shall be directed to any Bailiff of the Court as aforesaid, the copies of the same to be served upon the parties according to Law, shall be certified as true copies, either by the Prothonotary of the said Court, for the District in which they shall have issued, or by the Attorney of the party suing out such Writ.

XXI. And be it enacted, That every Writ or Process issued before this Act shall come fully into effect, which shall have been made returnable into any one of the several Courts of Queen's Bench, in the exercise of any of those jurisdictions or powers hereby transferred to and vested in the Superior Court, on any Juridical day subsequent to the time when this Act shall come fully into effect, shall be returned on the said day into the Office of the Prothonotary of the Superior Court, at the place where it shall have been made returnable, and shall then have the same and no other effect as if it had been issued from the Superior Court, and had been made returnable on such day and at such place.

XXII. And be it enacted, That every day not being a Sunday or Holy-day, shall be deemed a juridical day, for all the purposes of this Act, and shall be a return day for all Writs, Process and proceedings required to be returned into the Superior Court.

XXIII. And be it enacted, That it shall not be necessary that any Defendant summoned to appear before the Superior Court, shall appear or be called in open Court, but the Writ of Summons shall be returned into the Prothonotary's Office, on the day on which it shall be returnable, and the Defendant may on that day or on the next following juridical day, file his appearance personally or by attorney, in the Office of the Prothonotary of the Court, at any time during office hours, and if he shall not file his appearance as aforesaid, he shall not thereafter be allowed to appear (except by express permission as hereinafter mentioned), and his default shall, on the juridical day next but one after the return day, be recorded, and the Court shall proceed to hear, try and determine the suit or action in due course of law: and every such Writ of

Language.
Proviso as to seal.

Requisite affidavits to be received by the Prothonotary.
Proviso.

To whom writs of summons shall be addressed.
Exception.

Further exception—as to writs to be executed out of the District.

Copies how certified when served by a Bailiff.

Return of writs, &c., issued before the commencement of this Act.

What shall be return days.

Defendant not to be called in Court, &c.

Appearance how filed.

Default.

Delay between

Summons

service and
return.

Summons shall be served at least ten days (of which neither the day of service nor the day of the return shall be reckoned as one) before the day fixed for the return thereof, if there be not more than five leagues from the place of service of the Writ to the place where the Defendant shall be summoned to appear; and if there be more than five leagues, then there shall be an additional delay of one day for every additional five leagues: Provided, nevertheless, that every Defendant or other party in or to any suit or action who shall appear in person shall be considered as having, for all the purposes of such suit or action and of all proceedings incident thereto or consequent thereon by such appearance, elected his legal domicile at the Office of the Prothonotary of the Court in which such suit or action shall have been instituted; and all notices and all services of papers or documents in such suit or action which should otherwise be given or made by one attorney *ad litem*, to or upon another, shall be considered as having been legally given or made at such Prothonotary's Office.

Proviso as to
service on de-
fendant's ap-
pearing in per-
son.

How Defend-
ant in default
may be allowed
to appear.

XXIV. And be it enacted, That notwithstanding any such default to appear, the Defendant may, at any time before judgment, be allowed by the Superior Court, or by any one Judge thereof, to appear, on a special application of which the Plaintiff shall have had one clear day's notice, and for good cause shewn to the satisfaction of such Judge.

Delay for
pleading and
between plea-
dings.

Demand of
plea and fore-
closure.

XXV. And be it enacted, That whether the appearance be filed in term or in vacation, the Defendant shall be allowed eight clear days from his appearance to plead to the Declaration, and the Plaintiff shall have a like delay to answer, and there shall be a like delay between each further pleading allowed by law; and if at the expiration of the delay allowed for any pleading, the same shall not be filed, the opposite party may demand the same, and if it be not filed on or before the third juridical day after such demand, may foreclose the party by whom it ought to have been filed; and the filing of the return of service of such demand shall be sufficient to authorize the Prothonotary, upon application in writing for *Acte* of foreclosure, to grant and record the same without further notice or formality: Provided always, that the party foreclosed shall nevertheless be entitled to at least one clear day's notice of the inscription of the cause for *enquête* or hearing, before such *enquête* shall be commenced or the cause shall be heard.

Proviso: right
of party fore-
closed to
notice.

Delay for
pleading may
be enlarged.
Pleading with-
in the delay.

XXVI. And be it enacted, That the delay for pleading may in any case be enlarged by the Superior Court, or by any one Judge thereof, on special application of which notice shall be given to the opposite party at least one clear day before it is made; and that any party may file any pleading within the time hereby allowed for filing the same.

How and
where *enquêtes*
may be taken.

XXVII. And be it enacted, That the *enquêtes* in causes cognizable in the Superior Court shall be taken before a single Judge, or before more than one Judge of the said Court, or before any Circuit Judge as *Commissaire Enquêteur* of the Superior Court, and as well in Term as in Vacation, subject to the provisions hereinafter made; and that for that purpose it shall be lawful for the Judges of the Superior Court to assign one room or more than one room in each Court House, in which the Court is held, for the taking of such *enquêtes* therein, and to fix the number of Clerks or Writers whom the Prothonotary of the Court shall employ for taking such *enquêtes*, accordingly as the case may require.

Circuit Judges
to be Com-

XXVIII. And be it enacted, That each and every Circuit Judge shall be a *Commissaire Enquêteur* of the Superior Court, and shall have all the powers of a single Judge thereof

thereof with regard to the taking of *enquêtes*; but it shall not be the duty of such Circuit Judge to act as *Commissaire Enquêteur* when any Judge of the Superior Court is present at the place where the *enquête* is to be taken, and not incapacitated from acting by sickness or otherwise.

missaires Enquêteurs.

Proviso: to act as such only in certain cases.

XXIX. And be it enacted, That in the Districts of Montreal, Quebec, Three-Rivers and St. Francis, every juridical day out of Term, except every day in the month of August and the days on which the Circuit Court shall sit at the same place, shall be an *enquête* day; as shall also every day in Term which shall have been appointed by the Court for that purpose: and that in each of the other Districts every juridical day in vacation, (except every day in the month of August), on which a Circuit Judge or *Commissaire Enquêteur* shall be present at the place where the Superior Court is held, and every day in Term or out of Term which shall be appointed by the said Court for that purpose, shall be an *enquête* day.

Enquête days at Quebec, Montreal, Three-Rivers and St. Francis.

In other Districts.

XXX. And be it enacted, That the Superior Court, or any Judge thereof, may, in its discretion, order the *enquête* in any case, or the examination of any witness or witnesses, or of any party to the cause, or other person required to be examined in such case, to be taken at any place where Terms of the Superior Court are held, or at any place where sittings of the Circuit Court are held, before any Judge of the Superior Court or *Commissaire Enquêteur* thereof; and this provision shall extend to *Faits et Articles*, *Serment décisoire*, or other Oath which may be legally required of any party; and the examination may, in the discretion of the Court, be had in the usual manner as if the witness or party examined had appeared at the place where the case is pending, or upon written interrogatories and cross interrogatories; and the Court may, in its discretion, order the record or any portion thereof to be transmitted to the place where the *enquête* or examination is to be taken, but no Commission or formality other than the order of the Court shall be requisite, and such order (and the other documents if any) shall be transmitted to the Prothonotary of the Superior Court or Clerk of the Circuit Court, as the case may be, at the place where the *enquête* or examination is to be had, and such Prothonotary or Clerk may thereupon issue the proper process to compel the attendance of any witness or party to be examined in the case, at the place named in such order and on any *enquête* day at such place, or on any day (to be appointed by the *Commissaire Enquêteur*) on which a *Commissaire Enquêteur* will be present at such place.

Court or Judge may order *enquêtes*, &c., to be taken in any District.

How any witness or party may be examined in such other District.

XXXI. And be it enacted, That nothing in the next preceding section shall be construed to prevent the said Superior Court, or any Judge thereof, from issuing any *Commission Rogatoire*, or Commission in the nature of a *Commission Rogatoire*, addressed to any Commissioner or Commissioners at any place out of Lower-Canada, or at any place within Lower-Canada, if from the circumstances of the case the Court, or such Judge, shall think the ends of Justice will be better attained by such Commission than by such order as in the next preceding section is mentioned.

Not to prevent the issuing of *Commissions Rogatoires*, &c.

XXXII. Provided always, and be it enacted, That the Superior Court shall have original cognizance of, hear, try and determine, in due course of law, any suit or action in which a Writ of *Capias ad Respondendum*, shall be sued out, or in which a trial by Jury may by law be had, and the plaintiff shall in and by his declaration therein filed, declare his choice and option to have a trial by Jury, although the sum of money, or the

Court to have jurisdiction in certain special cases: *Capias ad Respondendum*.

Jury cases.

Proviso as to
option of a
Jury trial.

Costs.

Cases where a
Circuit Judge
or Judge of Q.
B. residing at
Three-Rivers
or St. Francis
is or shall be-
come a party.

Jury trials may
be had in va-
cation.

Jury trial may
be ordered to
be had in any
District.

Proceedings in
such case.

Jury trials may
be had at Cir-
cuit Courts,
when proper
provisions
shall be made.

Judgments
which may be
appealed from
to be *motivés*.

the value of the thing demanded, in such suit or action, shall not exceed, or shall be under fifty pounds, currency : Provided always, that such declaration of the choice and option of the plaintiff to have a trial by Jury, or the declaration of such choice and option by the Defendant, in his Evocation, as hereinafter provided, shall bind all parties to proceed accordingly, whenever the suit or action shall be ready for such trial ; nor shall any other mode of trial be allowed therein, except by consent of all the parties ; and saving always the discretionary power of the Court over the costs in any case it may deem to have been vexatiously or unnecessarily brought in or removed into the Superior Court, instead of being brought or left to be determined in the Circuit Court by which it would have been cognizable : Provided also, that the Superior Court shall have original cognizance of any suit or action to which the Judge residing in the Town of Three-Rivers, or the Judge residing in the Town of Sherbrooke, or any Circuit Judge shall be a party, and which, from its nature, or the amount, or value of the thing demanded, would have been otherwise cognizable by the Circuit Court, but such suit or action shall be heard, tried and determined, at any sitting of the Superior Court in term or in vacation, according to the course and practice of the Circuit Court, and with like costs ; and any suit or action to which such Judge, residing in the town of Three-Rivers or in the town of Sherbrooke, or a Circuit Judge shall become a party to any intervention, opposition, *demande en garantie*, or otherwise, shall be at once removed into the Superior Court, in the same District.

XXXIII. And be it enacted, That the Judges of the Superior Court, or any one of them, shall be and they are hereby authorized in all cases of trial by jury in civil matters, to try the issues of fact, and to receive the verdicts of juries in vacation, on such days as the Court shall have appointed for that purpose ; any law to the contrary notwithstanding.

XXXIV. And be it enacted, That the Superior Court may, in its discretion, order the trial by jury in any civil case to be had in any district ; and if such trial be ordered to be had in a district other than that in which the cause is pending, the record in the cause and the order for the trial shall be sent to the Prothonotary of the Court for the District in which the trial is ordered to be had ; and thereupon all proceedings to trial and verdict shall be had in such district, as if the cause were pending there, and the verdict shall then be returned, with the record, to the Prothonotary of the District wherein the cause is pending, for judgment and all ulterior proceedings.

XXXV. And be it enacted, That when and so soon as lists of jurors shall have been made out, and the requisite provisions of law in that behalf enacted, it shall be lawful for the Superior Court to order any trial by jury in a civil case to be had at any Circuit Court ; and the Judge presiding at such trial shall receive the verdict of the jury and return the same into the Superior Court, to be by the said Court proceeded upon according to law.

XXXVI. And be it enacted, That each final judgment, and each interlocutory judgment from which an appeal may lie, rendered by the Superior Court, as well in any suit or action by default or *ex-parte* which shall be dismissed, as in any suit or action where issue shall have been joined, shall contain a summary statement of the points of fact and law, and the reasons upon which such judgment shall be founded, and the names of the Judges who shall have concurred therein or entered their dissent therefrom.

XXXVII,

XXXVII. And be it enacted, That an Appeal and Writ of Error shall lie to the Court of Queen's Bench established by an Act of this Session, from the judgments of the Superior Court (whether rendered in any cause commenced in the said Court, in the first instance, or brought into it by appeal, evocation, removal from some other Court, or transmission from some former Court,) in every case in which, from its nature or the amount in dispute, an Appeal or Writ of Error by Law lay, immediately before the coming into force and effect of the Act passed in the seventh year of Her Majesty's Reign and intituled, *An Act for the establishment of a better Court of Appeals in Lower-Canada*, from the judgments of the Courts of King's Bench in and for the several Districts of Lower-Canada, to the Provincial Court of Appeals, upon the same terms and conditions, and under and subject to the same restrictions, limitations, rules and regulations as were then established and obtained in Appeals from the said Courts of King's Bench to the said Provincial Court of Appeals.

In what cases an appeal shall lie from Judgments of the S. Court.

7 V. c. 18.

XXXVIII. And be it enacted, That all and every the Records, Registers, Muniments and judicial or other proceedings of the Courts of Queen's Bench in the several Districts of Lower-Canada (except only such as by any Act of this Session are directed to be transmitted into the Court of Queen's Bench established, as aforesaid, by an Act of this Session, and such as are by this Act directed to be transmitted into the Circuit Court,) shall forthwith, after this Act shall come fully into effect, be transmitted into and make part of the Records, Registers, Muniments, and judicial or other proceedings of the Superior Court hereby established, in the Districts and at the places in and at which the said several Courts of Queen's Bench are now respectively established and held; that is to say, the Records, Registers, Muniments, judicial and other proceedings of the said Court of Queen's Bench for the District of Montreal, shall be transmitted into the said Superior Court, and shall be kept in the Office of the Prothonotary thereof for the said District, at the City of Montreal; and the Records, Registers, Muniments, judicial and other proceedings of the said Court of Queen's Bench for the District of Quebec, shall be transmitted into the said Superior Court, and shall be kept in the Office of the Prothonotary thereof for the said District, at the City of Quebec; and the Records, Registers, Muniments, and judicial or other proceedings of the said Court of Queen's Bench for the District of Three-Rivers, shall be transmitted into the said Superior Court, and shall be kept in the office of the Prothonotary thereof for the said District, at the Town of Three-Rivers; and the Records, Registers, Muniments, judicial or other proceedings of the said Court of Queen's Bench for the District of St. Francis, shall be transmitted into the said Superior Court, and shall be kept in the Office of the Prothonotary thereof for the said District, at the Town of Sherbrooke; and the Records, Registers, Muniments, judicial and other proceedings of the said Court of Queen's Bench for the District of Gaspé, shall be transmitted into the said Superior Court, and shall be kept in the Office of the Prothonotary thereof for the said District, at Percé and at New Carlisle, respectively, that is to say, those which before the passing of this Act, would be kept at Percé, shall be kept in the Office of the said Prothonotary there, and those which before the same time, would be kept at New Carlisle, shall be kept in the Office of the said Prothonotary there.

Transmission of certain records, &c., of the present Courts of Q. B. into the S. Court.

Places to which they shall be transmitted.
Montreal.

Quebec.

Three-Rivers.

Sherbrooke.

Gaspé.

XXXIX. And be it enacted, That no judgment, order, rule or act of the said several Courts of Queen's Bench respectively, legally pronounced, given, had or done before this Act shall come fully into effect, shall be hereby avoided, but shall remain in full force and virtue as if this Act had not been passed; nor shall any action, information, suit, cause

Actions, &c., in the present Courts of Q. B. to be continued in the S. Court.

cause or proceeding depending in the said Courts respectively, be abated, discontinued or annulled, but the same shall (except such as are by this Act or any other Act of this Session, directed to be transferred to and to subsist in some Court other than the Superior Court), be transferred in their then present condition respectively to and subsist and depend in the said Superior Court, in the several and respective Districts in which they shall be subsisting and depending when this Act shall come fully into effect, as if they had respectively been commenced, brought or recorded in the said Superior Court, and in such District as aforesaid, and whatever be the amount or value in dispute, and other and further proceedings shall be therein had in the said Superior Court to judgment and execution, or subsequent thereto, as might have been had in the said several Courts of Queen's Bench respectively, or in the said Superior Court in cases or proceedings commenced and depending before that Court.

Records, &c.,
of the present
Courts of Q.
B. in Inferior
Term, to be
transmitted
into the Cir-
cuit Court at
the same place.
Montreal.

XL. And be it enacted, That all and every the Records, Registers, Muniments and judicial or other proceedings of the Courts of Queen's Bench in the several Districts of Lower-Canada, in the Inferior Terms of the said Courts respectively, shall forthwith, after this Act shall come fully into effect, be transmitted into and make part of the Records, Registers, Muniments, and judicial or other proceedings of the Circuit Court, in the Circuits and at the places in and at which the said Courts of Queen's Bench are now respectively established and held; that is to say, the Records, Registers, Muniments, judicial and other proceedings of the said Court of Queen's Bench for the District of Montreal, in the Inferior Term of the said Court, shall be transmitted into the said Circuit Court, and shall be kept in the Office of the Clerk thereof for the Montreal Circuit, at the City of Montreal; and the Records, Registers, Muniments, judicial and other proceedings of the said Court of Queen's Bench for the District of Quebec, in the Inferior Term of the said Court, shall be transmitted into the said Circuit Court, and shall be kept in the Office of the Clerk thereof for the Quebec Circuit, at the City of Quebec; and the Records, Registers, Muniments, and judicial or other proceedings of the said Court of Queen's Bench for the District of Three-Rivers, in the Inferior Term of the said Court, shall be transmitted into the said Circuit Court, and shall be kept in the Office of the Clerk thereof for the Three-Rivers Circuit, at the Town of Three-Rivers; and the Records, Registers, Muniments, judicial or other proceedings of the said Court of Queen's Bench for the District of St. Francis, in the Inferior Term of the said Court, shall be transmitted into the said Circuit Court, and shall be kept in the Office of the Clerk thereof for the Sherbrooke Circuit, at the Town of Sherbrooke.

Quebec.

Three-Rivers.

Sherbrooke.

Actions, &c.,
in the Inferior
Terms, to be
continued in
the Circuit
Court held at
the same place.

XLI. And be it enacted, That no judgment, order, rule or act of the said Courts of Queen's Bench respectively, in Inferior Term, legally pronounced, given, had or done before this Act shall come fully into effect, shall be hereby avoided, but shall remain in full force and virtue as if this Act had not been passed; nor shall any action, information, suit, cause or proceeding depending in the said Courts respectively in Inferior Term, be abated, discontinued or annulled, but the same shall be transferred in their then present condition respectively to and subsist and depend in the said Circuit Court, in the several and respective Circuits in and into which the Records and other proceedings therein, are hereinbefore directed to be transmitted and kept, when this Act shall come fully into effect, as if they had respectively been commenced, brought or recorded in the said Circuit Court, and in such Circuit as aforesaid, and other and further proceedings shall be therein had in the said Circuit Court to judgment and execution,

execution, or subsequent thereto, as might have been had in the said several Courts of Queen's Bench respectively, in Inferior Term, or in the said Circuit Court in cases or proceedings commenced and depending before the said Court: and the provisions of this and of the next preceding section shall apply to the judgments of the several Courts of King's Bench, mentioned in the Act passed in the eleventh year of Her Majesty's Reign, and intituled, *An Act to render executory certain Judgments rendered by the late Courts of King's Bench for Lower-Canada*, and to the Records and proceedings in the said Courts of King's Bench in Inferior Term.

This section to apply to judgments of the former Courts of K. Bench.
11 V. c. 4.

XLII. And be it enacted, That a Court of Record, to be called the Circuit Court, and having jurisdiction throughout Lower-Canada, shall continue to be holden every year in each of the Circuits in Lower-Canada, hereinafter mentioned, by one of the Judges of the Superior Court, or by one of the Circuit Judges; Provided always, that nothing in this Act contained shall be construed to make the Circuit Court to be held under it at any place a new Court, or to abate or discontinue any suit, action or proceeding pending therein, but the Circuit Court to be holden under this Act shall be held to be to all intents and purposes, one and the same with the Circuit Court holden at the same place under the Acts hereby repealed, notwithstanding any change hereby made in its name, constitution or jurisdiction, or in the times at which it is to be held.

Circuit Court established for Lower-Canada.

Circuit Court at any place not to be deemed a new Court, &c.

XLIII. And be it enacted, That the District Judges for the District of Gaspé shall from and after the time when this Act shall come fully into effect, and without any new Commission, be and be called Circuit Judges, and not District Judges, and that they and the other Circuit Judges theretofore appointed in and for the other Districts, shall by virtue of this Act, and without any new Commission, and until they shall respectively resign, be removed or suspended from office, be Circuit Judges for Lower-Canada, as shall also, each and every Circuit Judge thereafter appointed; and the Circuit Judges for Lower-Canada, whether appointed before or after the time when this Act shall come fully into effect, shall each respectively have full power to act as such in any part of Lower-Canada, but the Districts and places in and at which they shall respectively reside, and in which they shall ordinarily act, shall be from time to time appointed by the Governor, but this shall not prevent their acting in other places or Districts whenever circumstances shall require them so to do: provided that at least one of the said Circuit Judges shall reside at New Carlisle, in the District of Gaspé, and at least one of them at Percé, in the said District, and at least one of them at Aylmer, in the District of Ottawa, after the Proclamation establishing the said District shall have issued, and at least one of them at Kamouraska, in the District of Kamouraska, after the Proclamation establishing the said District shall have issued, and at least one of them at Chicoutimi, in the Circuit of Saguenay, and the others shall respectively reside at the City of Montreal, or at the City of Quebec: And the total number of the said Circuit Judges in office at any one time shall not be more than nine.

District Judges in Gaspé to be hereafter called Circuit Judges.

Circuit Judges to be so for all Lower-Canada.

Where the Circuit Judges shall reside.

Their number limited to nine.

XLIV. And be it enacted, That whenever any of the Circuit Judges appointed before or after the time when this Act shall come fully into effect, shall die, resign or be removed, or suspended from office, or whenever, from any cause, the number of Circuit Judges shall be or become less than the number fixed in and by the next preceding section, and it shall be deemed expedient to fill the vacancy thus existing, it shall be awful for the Governor of this Province, by an Instrument under the Great Seal hereof, to appoint a proper person to be a Circuit Judge for Lower-Canada; and all

How vacancies shall be filled.

such

Circuit Judges to be Chairmen of Quarter Sessions.
Other duties may be assigned to them.
Proviso: not to act as advocates, &c.

such Circuit Judges, appointed before or after the passing of this Act, shall be *ex officio* Justices of the Peace, and shall act as Chairmen of the General or Quarter Sessions in and for the several Districts in Lower-Canada, and for the Chicoutimi Circuit, when such Sessions shall be held therein; and the said Circuit Judges shall also have such powers and duties as are hereinafter assigned to them, or as may be assigned to them by any other Act of the Legislature: Provided always, that no such Circuit Judge shall act as Advocate, Attorney, or Counsel in Lower-Canada.

Proviso: Sessions not to be incompetent by their absence.

Act 6 V. c. 3, not to apply to them.

XLV. Provided always, and be it enacted, That nothing in this Act shall be construed to render any Court of General or Quarter Sessions incompetent by reason of the absence of any Circuit Judge, who, if present, would be the Chairman of the Court: And provided also, that the provisions of the Act passed in the sixth year of Her Majesty's Reign, and intituled, *An Act for the Qualification of Justices of the Peace*, shall not extend to any Circuit Judge; any thing in the said Act to the contrary notwithstanding.

Who may be appointed a Circuit Judge.

XLVI. And be it enacted, That no person shall be appointed a Circuit Judge unless he be an Advocate of at least five years' standing at the bar of Lower-Canada.

Cases in which the Circuit Court shall have jurisdiction.

Proceedings to be summary in cases up to £15 and in good conscience up to £6. 5s.

Proviso.

Certain actions evocable by defendant in certain cases to the S. Court.

Proceedings on evocation.

If maintained.

If overruled.

XLVII. And be it enacted, That the Circuit Court shall have cognizance of and shall hear, try and determine all Civil Suits or Actions, as well those where the Crown may be a party as others (those purely of Admiralty jurisdiction excepted) wherein the sum of money or the value of the thing demanded shall not exceed Fifty pounds currency, and wherein no Writ of *Capias ad Respondendum* shall be sued out; and if the said sum or value shall not exceed Fifteen pounds currency, the Suit or Action shall be heard, tried and determined in a summary manner; and if the said sum or value shall not exceed Six pounds Five shillings currency, then the said Suit or Action shall be determined according to equity and good conscience; Provided always, that if any such Suit or Action shall relate to any title to lands or tenements, or to any sum of money payable to Her Majesty, or to any fee of office, duty or rent, revenue, annual rents or such like matters or things where the rights in future may be bound, or shall be a suit or action in which a trial by jury may by law be had and in which the defendant shall in and by his evocation declare his choice and option to have a trial by jury, it shall be lawful for the party defendant, before making his defence to the merits of any such suit or action, to evoke the same, and by such evocation to require that the said suit or action be removed and carried for hearing, trial and judgment, to and in the Superior Court in the same District; and every such evocation shall be filed and entered of record, and the said suit or action shall thereupon be removed into the said Superior Court, which shall, at any sitting thereof, in or out of Term, proceed to hear and determine in a summary way whether the said evocation be well founded; and if it should maintain the said evocation and adjudge the same to be well founded, proceedings shall thereupon be had in the said Superior Court to trial and judgment and execution according to the rules of proceeding in the said Court, as if the said suit or action had been originally instituted therein; and if the said evocation should be overruled, the said suit or action shall be remitted to the Circuit Court there to be heard, tried and finally determined.

Evocation by plaintiff on

XLVIII. And be it enacted, That if in any suit or action which might be so evoked as aforesaid, the defendant shall not evoke the same, but shall make any plea or defence by

by which the plaintiff's title to any lands or tenements shall be disputed or called in question, or by which, if maintained, his rights in future would be impaired or injuriously affected, it shall then be lawful for the plaintiff to evoke such suit or action, in the same manner and with the same effect as the defendant might have done, and such evocation and the suit or action so evoked shall be subject to the provisions herein made as to suits or actions evoked by the defendant.

defendant's plea.

XLIX. And be it enacted, That all actions, suits, or proceedings may be commenced at the place where the terms of the Circuit Court are held in any Circuit, provided the cause of such suits, actions or proceeding respectively, shall have arisen within such Circuit, or the defendant or one of the defendants, or the party or one of the parties, to whom the original Writ, Order or Process shall be addressed, shall be domiciled or served personally with such Writ, Order or Process within such Circuit, and that all the defendants or parties aforesaid be legally served with Process and not otherwise, except where any of the said defendants or parties shall be summoned by advertisement as hereinafter mentioned: Provided always, that the Process may in such cases be served out of the limits of the Circuit, but in the District in which such Circuit is situate, by any Bailiff of the Superior Court appointed in and for such District.

In what Circuit actions, &c., may be commenced.

Proviso as to service of process.

L. And be it enacted, That in any suit or action to be brought in the Circuit Court, the first Process to be issued for bringing the defendant before the said Court, to answer the *demande* made in such suit or action, shall be a Writ of Summons, in which the Plaintiff's cause of action shall be briefly stated, unless there shall be attached to such Writ of Summons a Declaration setting forth the cause of action, in which case it shall be sufficient that in the Writ of Summons reference be made to the Declaration for the cause of action; and such Writ of Summons may be in the form contained in the Schedule A, to this Act subjoined, and shall be served at least five days (of which neither the day of service nor the day of return shall be reckoned as one) before the day fixed for the return thereof, if there be not more than five leagues from the place of service to the place where the Court shall be held; and if, in any such case, there be more than five leagues, then there shall be an additional delay of one day for every additional five leagues; and such Writ of Summons shall be directed to and executed by any Bailiff of the Superior Court appointed in and for the District in which the same shall have been issued, any law or custom to the contrary notwithstanding; and the copies of the Writ of Summons and of the declaration, if any there be, to be served upon parties according to law, shall be certified as true copies, either by the Clerk of the Circuit Court, or by the Attorney of the Plaintiff: Provided always, that in all cases cognizable by the Circuit Court, where such Writ of Summons may by law be executed in any District other than the District in which the same shall have issued, such Writ of Summons shall be directly addressed to the Sheriff of such other District, and shall be executed and returned by such Sheriff to the Circuit Court at the place from which it shall have issued, according to the exigency of such Writ and to law.

Process by which actions &c., shall be commenced.

Form of Writ of Summons, Delay between service and return.

By whom service shall be made,

Copies how certified.

Proviso as to Process to be executed out of the District.

LI. And be it enacted, That all Writs and Process issuing out of the Circuit Court, shall run in the name of Her Majesty, Her Heirs or Successors, and shall be sealed with the Seal of the Court, and signed by the Clerk whose duty it shall be to prepare the same, and shall not be tested in the name of any Judge, but the words "in witness whereof we have caused the Seal of our said Court to be hereunto affixed" shall be instead

Style and form of Writs and Process.

instead of such *teste*, and all such Writs and Process may be either in the English or in the French language; any law, usage or custom to the contrary notwithstanding.

Return of
Process issued
before the
commence-
ment of this
Act.

In appealable
cases.

In non-ap-
pealable cases.

Effect.

LII. And be it enacted, That every Writ or Process issued before this Act shall come fully into effect, which shall have been made returnable into any one of the several Courts of Queen's Bench, in the Inferior Term thereof, or into any Circuit Court, on any day subsequent to the time when this Act shall come fully into effect, shall be returned on that day into the office of the Clerk of the Circuit Court, at the place where it shall have been made returnable, unless it shall have issued in a non-appealable case, and such day shall happen not to be a return day in such cases, and it shall then be returned into the said Court at the said place, on that juridical day which shall be next after the day on which such Writ or Process shall have been made returnable, and in either case it shall then have the same effect, and no other, as if it had been issued from the Circuit Court, and had been made returnable on such day and at such place.

Appeal to the
Superior Court
in certain
cases.

LIII. And be it enacted, That from any Judgment rendered by the Circuit Court, in any suit or action in which the sum of money or the value of the thing demanded shall exceed fifteen pounds currency, if such judgment be rendered after this Act shall come fully into effect, or in which the sum of money or value of the thing demanded shall exceed ten pounds currency, if such judgment shall have been rendered in any suit or action brought before the said time, or which shall relate to any titles to lands or tenements, or to any sum of money payable to Her Majesty, fee of office, duty or rent, revenue, annual rents, or such like matters or things, where the rights in future may be bound, an appeal shall lie to the Superior Court in the District within which the suit or action shall have been originally instituted; which said Court shall proceed to hear and adjudge on such appeal as to law may appertain, and in the manner herein-after provided.

Mode of bring-
ing appeals.

Security.

Before whom
and how
given.

Who may be
surety.

Justification.

Proviso: if the
appellant al-
lows the

LIV. And be it enacted, That the party appealing from any judgment rendered as aforesaid by the Circuit Court, shall within fifteen days after the rendering of the judgment to be appealed from (but without being bound to give previous notice thereof to the adverse party) give good and sufficient security, by sureties who shall justify their sufficiency to the satisfaction of the person before whom it shall be given as hereinafter provided, that he will effectually prosecute the said appeal and answer the condemnation and also pay such costs and damages as shall be awarded by the Superior Court if the judgment appealed from should be affirmed; and such security shall be given either before any Judge of the Superior Court or the Prothonotary thereof, and the bond shall then be deposited and remain of record in the Office of the latter, or it shall be given before any Circuit Judge, when at the place where the said judgment appealed from shall have been rendered, or before the Clerk of the Circuit Court at such place, and the bond shall then be deposited, and remain of record in the office of the latter; and any one surety, being a proprietor of real property of the value of fifty pounds currency, over and above all incumbrances payable out of or affecting the same, shall suffice to render such security valid; and the said Judges, Prothonotaries, or Clerks, are hereby respectively authorized to administer all oaths required by law in such cases from the persons so becoming sureties, and to put to them all necessary enquiries and questions: Provided always, that if the party appealing shall, within the same delay of fifteen days after the rendering of the judgment, agree and declare in writing

writing at the Office of the Prothonotary of the Superior Court, or at the Office of the Clerk of the Circuit Court appealed from, that he does not object to the judgment being carried into effect according to law, or shall pay into the hands of either of the said Prothonotaries or Clerks, the amount, in capital, interest and costs, of the said judgment, and shall, at the same time, declare in writing his intention to appeal, (which amount, when so paid, the respondent shall be entitled to have and receive from the said Prothonotary or Clerk) then, and in that case, the party so appealing, in lieu of the security above required, shall give security only for such costs and damages as shall be awarded by the Superior Court, in case the appeal be dismissed; and provided also, that when only such last mentioned security shall have been given, the respondent, if the judgment appealed from be reversed, shall not be bound to return to the appellant more than the amount of money so paid by the latter into the hands of the Prothonotary or Clerk, with the legal interest thereon from the day of the payment of the same to the said Prothonotary or Clerk—or more than the sum levied under the execution sued out upon such judgment, with the legal interest upon such sum from the day of its being so levied,—or more than the restitution of the real property whereof the respondent shall have been put in possession by virtue of the said judgment, and the net value of the produce and revenues thereof, to be computed from the day the respondent shall have been put in possession of such real property, until perfect restitution is made,—with the costs of such appellant, as well in the Court appealed to as in the Court below, but without any damages, in any of the said cases, against the respondent by reason of the said Judgment or of the said execution; any law, custom or usage to the contrary notwithstanding.

judgment to be executed, or paid in the amount of the judgment.

Proviso: effect of reversal of judgment in the cases last mentioned.

LV. And for the purpose of obviating delay and expense in the prosecution of appeals from judgments rendered by the Circuit Court—Be it enacted, That such appeals shall be prosecuted and proceedings thereon had in a summary manner, by petition of the appellant to the Superior Court setting forth succinctly the grounds of appeal, and praying for the reversal of the judgment appealed from, and the rendering of such judgment as by the Court below ought to have been rendered; a copy of which petition, with a notice of the time at which it is to be presented to the Superior Court, shall be served on the adverse party personally, or at domicile, or on his Attorney *ad litem*, within twenty-five days from the rendering of the judgment appealed from; and such petition shall be so presented at some Weekly Sitting or Term (whichever shall first happen) of the Superior Court, next succeeding the rendering of the judgment, if there shall be an interval of thirty days between the rendering of such judgment and such sitting or term, and if there shall not be such an interval, then on the first juridical day of the sitting or term next succeeding the expiration of the thirty days next after the rendering of such Judgment: Provided always, that neither the day of the rendering of the judgment appealed from, nor the day of the presenting of the said petition to the Superior Court, shall be considered as forming part of the said interval of thirty days; And provided also, that a true copy of the appeal bond given by the party appealing, certified as such by the Prothonotary or Clerk in whose Office it shall have been deposited, shall be annexed to the original of the petition presented to the Superior Court, and that a copy or copies of the same, certified as such by the party appealing, or his Attorney, shall be served, with the petition and notice hereinbefore mentioned, upon the party respondent.

Appeals to be determined summarily.

Petition, notices, &c.

Service of copy of Petition.

When to be presented.

Proviso: mode of computing the delay.

Proviso: copy of the appeal-bond to accompany the Petition.

LVI. And be it enacted, That within the same delay of twenty-five days after the rendering of the judgment appealed from as aforesaid, the party appealing shall also cause a copy of the said petition and notice only, to be served upon the Clerk in the Office and custody of whom the record in the suit or action in which the judgment is appealed from shall be, with a certificate from the Prothonotary of the Superior Court, that security in appeal has been given, if the appeal-bond shall not be deposited in the Office of the Court appealed from; and thereupon it shall be the duty of the said Clerk of the last mentioned Court without waiting for the presenting of the said petition to the Superior Court, forthwith to certify under his hand and the Seal of the Court, to the Superior Court, and to cause to be transmitted to the said Court (to be filed among the Records thereof) the judgment, record, evidence, and proceedings to which such appeal shall relate; and after the transmission of the said judgment, record, evidence and proceedings, and the filing of the said petition of appeal by and on the part of the appellant as aforesaid, the appeal shall, without any further formality, be summarily heard, and judgment thereon rendered by the said Court, as to Law and Justice may appertain; Provided always, that if the judgment appealed from shall have been rendered, by any Judge of the Superior Court holding the Circuit Court, such Judge shall not sit on the hearing and judgment of the cause upon such appeal; and if the Superior Court be equally divided on the question whether the judgment appealed from ought or ought not to be affirmed, it shall stand and be affirmed; And provided also, that any appellant who shall neglect to cause a copy of such petition and notice of appeal to be served as aforesaid or who after having caused the same to be served, shall neglect to prosecute effectually the said appeal in the manner hereinbefore prescribed, shall be considered to have abandoned the said appeal, and upon the application of the respondent, the Court appealed to shall declare all right and claim founded on such appeal to be forfeited, and shall grant costs to the respondent, and order the record (if transmitted) to be remitted to the Court below.

Proceedings for causing the record to be transmitted to the Superior Court.

Transmission of the record.

Subsequent proceedings.

Proviso: judge appealed from not to sit.
Equal division.

Appeal to be deemed abandoned in certain cases.

Defaults in non-appealable cases.

Proceedings after default.

Plaintiff not appearing.

Plaintiff establishing his demand.

LVII. And be it enacted, That if the Defendant in any non-appealable suit or action instituted in the Circuit Court, shall not appear personally or by his Attorney, on the day fixed for the return of the Writ of Summons, his default shall be recorded; and in any such case it shall not be necessary that the defendant be called on the third day, or at any other time thereafter, nor shall he be entitled to appear at any other time, and have the said default taken off, unless express permission be given to him by the Court, any law, usage or custom to the contrary notwithstanding; and after the default shall have been so recorded, it shall be lawful for the Court, after due proof of the service of the Writ of Summons, in a summary manner, to receive evidence and hear the Plaintiff in support of his *demande* in such suit or action, and thereupon to make and render such judgment as Law and Justice may require; and if the said Defendant should appear on the said day, either personally or by his Attorney and the Plaintiff should not appear either personally or by his Attorney, or appearing should not prosecute his suit or action, the same shall be dismissed, with costs to the Defendant against the Plaintiff; and if the Plaintiff in any such suit or action should establish his demand, he shall be entitled to recover the sum of money or thing by him demanded, and costs against the Defendant.

Pleadings in non-appealable cases.

LVIII. And be it enacted, That in non-appealable cases, the pleadings after the declaration shall be oral or in writing, at the option of the Defendant, unless the Court shall expressly order the same to be in writing; and if the Defendant choose to plead in writing,

writing, he shall file his plea upon appearing, unless further delay be granted to him by the Court, but if he be ordered to plead in writing he shall have such delay as the Court shall allow him by such order, and in either case no answer in writing by the Plaintiff shall be necessary, unless expressly ordered by the Court; and if the Defendant do not plead in writing, he shall, on appearing, be called upon by the Court to state orally or in writing what facts (if any) alleged in the Plaintiff's declaration he is willing to admit, and his admission shall be recorded, and if he refuses or neglects to make such statement, he shall be deemed to have denied them all, and shall be liable for the costs of the proof thereof, as hereinafter provided in other cases; and if the Plaintiff be ordered to answer in writing he shall have such delay to answer as the Court shall allow him by such order

Articulation de faits by defendant in such cases.

LIX. And be it enacted, That in appealable cases the pleadings shall be in writing, and the delay for pleading, answering and replying shall be the same as in the Superior Court.

In appealable cases delay for pleading, &c. to be as in S. Court.

LX. And be it enacted, That in any non-appealable suit or action in the Circuit Court, it shall not be necessary to reduce to writing the depositions of the witnesses, but such witnesses shall be examined *vivâ voce*, in open Court, nor shall it be necessary that any notes of the evidence be taken by the Judge, any law, custom or usage to the contrary notwithstanding; but in any appealable suit or action, that is in any suit or action in which, by this Act, an appeal may lie to the Superior Court, the evidence shall be reduced to writing in the same manner as in the Superior Court; and every day on which a Judge of the Superior Court or a Circuit Judge shall be present at the place where the Court is held in any Circuit, shall be an *enquête* day for causes pending in such Circuit, but the taking of any *enquête* shall not prevent the Judge from proceeding with the dispatch of any other business before him or before the Court: Provided always, that by consent of all the parties to any appealable suit or action, the evidence therein may be taken orally as in non-appealable cases: And provided also, that the *enquêtes* in cases pending before the Circuit Court may always be taken by and before any Judge of the Superior Court, and it shall be the duty of any such Judge when presiding at *enquêtes* in cases pending in the Superior Court, to preside at the *enquêtes* in cases pending in the Circuit Court which are to be taken on the same day and at the same place, and he shall and may preside at both at the same time: nor shall his having presided at the *enquête* in any case in the Circuit Court, or his having given any decision with regard to the evidence therein while so presiding, disqualify him from sitting in the Superior Court on any appeal brought thereto in such case.

Oral evidence in non-appealable cases.

In appealable cases, to be in writing.

What shall be *enquête* days.

Proviso: oral evidence by consent in any case.

Proviso: Judge of S. C. to take *enquêtes* in C. Court in certain cases.

Proviso as to appeals in such cases.

LXI. And be it enacted, That the Judge holding any Circuit Court, shall as well in Court as out of Court or in vacation have like power to order the *enquête* in any suit or action to be taken, or any witness or party to be examined, before a Judge of the said Court in any other Circuit on any day to be appointed by such Judge, and to order the transmission of the record or of any portion thereof to such other Circuit, as is hereinbefore vested in the Superior Court or any Judge thereof, and such order shall be obeyed accordingly by the Clerk of the Court for the Circuit in which such *enquête* is to be taken or such witness or party is to be examined; and the provisions hereinbefore made in similar cases with reference to the Superior Court or to any Judge thereof, by the Thirtieth section or by the Thirty-first section of this Act, shall apply to the cases mentioned in this section.

Enquêtes, &c., may be ordered to be taken in any other Circuit.

Provisions of Sect. 30, 31, to apply in such cases.

Distance from which witnesses may be compelled to attend.

LXII. Provided always, and be it enacted, That no person shall be bound to attend the Circuit Court as a witness in any suit or action pending therein, unless he be resident within fifteen leagues of the place at which he shall be summoned to attend or within the Circuit in which such place shall be.

Circuit Court may issue certain Writs.

LXIII. And be it enacted, That the Circuit Court shall have power and authority in causes and matters cognizable therein, to issue Writs of *saisie-arret* before or after judgment, *saisie-gagerie*, and *saisie-revendication*, to be made returnable in the said Court, in the same and in like cases and circumstances in which such Writs might immediately before the time when this Act shall come fully into effect, lawfully be issued from and be made returnable in any of Her Majesty's Courts of civil jurisdiction in Lower-Canada, and under and subject to the rules of law in such cases provided; and that in all cases where such Writs shall be issued out of the said Circuit Court, it shall and may be lawful for the Clerks of the said Court respectively, to take and receive the necessary oath, affidavit or proof, in such cases by law required, and thereupon to issue, without the *fiat* of a Judge, any of the above mentioned Writs, in like manner as if the same had been granted or awarded by a Judge of the proper Court; Provided always, that nothing herein contained shall prevent any Judge of the Superior Court, or Circuit Judge, from granting or awarding any such Writ as aforesaid, in cases where he could otherwise do so according to law: and provided always, that in all cases in which a Writ of *Capias ad Respondendum*, or a Writ of *Saisie-Arret* before Judgment in an action cognizable by the Superior Court, may by law be issued, the Clerks of the Circuit Court respectively shall have the same power and authority as are vested in the Prothonotaries of the Superior Court respectively, to receive the requisite affidavit, and to issue such last mentioned Writ of *Capias ad Respondendum*, or of *Saisie-Arret* before Judgment, and to make the same returnable in the Superior Court in the District in which the same shall have issued; and the Writs last mentioned shall, in any such case, be addressed directly, either to the Sheriff of the said District, or to any Bailiff of the Superior Court, appointed for the same and by them respectively executed and returned; and when such Writ shall be so addressed to any such Bailiff, such Bailiff shall without delay proceed to execute the same, without any previous Warrant from the Sheriff, and shall deliver the Writ, with a report of his proceedings thereon to the Sheriff, to whom he shall also deliver the body, or the goods attached, as the case may be, to be dealt with according to law, and by whom the Writ and the proceedings thereon shall then be returned to the Superior Court: Provided always, that in such case, the Sheriff shall not be responsible for any act done by the Bailiff, until the Officer last named shall have complied with the foregoing requirements; and in every such case service of the declaration in the cause may be made in the same manner and within the same delay as if the Writ had been issued by the Prothonotary of the Superior Court, and addressed to and executed by the Sheriff: Provided always, that in all cases where any such Writ of Attachment against the body or goods shall be issued by any Clerk of the Circuit Court, and made returnable in the Superior Court, the defendant shall be entitled to the same relief on giving security or otherwise to the Sheriff, and in default shall be committed to the common Gaol of the District, in like manner as if such Writ had been issued by the Prothonotary of the Superior Court.

Who may receive affidavits for obtaining Writs.

Proviso.

Proviso: Certain Writs may be issued by the Clerks of the Court and made returnable in C. Court.

Such Writs to whom to be addressed. If to a Bailiff.

Report to Sheriff.

Proviso: When the responsibility of the Sheriff shall commence, &c.

Proviso: Defendant to have the usual relief by Bail, &c.

Certain powers vested in the Circuit Court,

LXIV. And be it enacted, That all powers vested in the Superior Court or in the Judges or Officers of such Court, respectively, in any suit or action pending in the said Court,

Court, with regard to the summoning of Defendants *en garantie*—the admission of parties to intervene—the summoning of witnesses and the adduction of evidence—the production of papers and other things in the possession of any witness or party—the examination of any witness or party, and the oaths to be deferred, referred or required of them—the issuing of any *Commission Rogatoire* or Commission in the nature of a *Commission Rogatoire*—the examination of any witness sick or about to leave Lower Canada—the enforcing of the attendance of witnesses duly summoned, and the punishment of such as shall disobey any Writ of *Subpœna*—the imprisonment (*contrainte par corps*) of any defendant or party resisting or fraudulently endeavouring to evade the execution of any Writ against his goods or chattels,—or with regard to other matters relative to or connected with the conduct of such suit or action, and the proceedings therein, shall be and all such powers are hereby vested in the Circuit Court, and the Judges by whom the same is to be held, and in the Officers of the said Court, respectively, and may be exercised by them (in so far as such powers and the provisions of law thereunto relating shall not be repugnant to or inconsistent with the provisions of this Act,) as fully and effectually, and under the same provisions and conditions of law, as if the several Acts, Ordinances and Laws conferring the said powers were herein recited and re-enacted, and in such manner as shall be most conformable to and consistent with the other enactments of this Act.

Judges and Officers, as in other Courts in like matters.

LXV. And be it enacted, That whenever any Judge holding the Circuit Court at any place, shall be lawfully recused in any suit or action, or shall be disqualified or rendered incompetent either by reason of interest, relationship or otherwise, from taking cognizance of the same, such Judge shall immediately upon such recusation being made, cause an entry thereof, or of the reasons of such disqualification or incompetence to be made on the record, and shall thereupon order that the record and proceedings in such suit or action be removed to the Superior Court in the District in which the said suit or action shall have been brought, there to be heard, tried, and finally determined, in the case of such disqualification or incompetence as above mentioned, at any Term or Sitting of the said Court, but according to the course and practice of the Circuit Court; but in the case of a recusation, the Superior Court shall at any such Term or Sitting, first proceed in a summary manner to determine whether such recusation be well founded, and if it should maintain the said recusation and adjudge the same to be well founded, proceedings shall thereupon be had to trial, judgment and execution, according to the course and practice of the Circuit Court; and if the Superior Court should dismiss the said recusation, the said suit or action shall be remitted to the Circuit Court in the Circuit in which it shall have been originally brought; and when, in any case of recusation, disqualification, or incompetence as aforesaid, an order shall have been made for the removal of the suit or action, as above required, the Clerk of the Circuit Court shall make an entry of such order in the Register thereof, and thereupon it shall be his duty forthwith to certify under his hand and the seal of the Court to the Superior Court in the proper District, and to cause to be transmitted to the said Court, the record and proceedings in the cause, which shall then be filed among the records of the said Court, and there shall continue to remain, even after judgment, as if the suit or action had been originally instituted in the said Court, except only in cases where a recusation shall have been made and dismissed as aforesaid, in which case the said record and proceedings shall be remitted as hereinbefore directed.

Provision when the Judge holding the Circuit Court shall be recused, or incompetent.

Recusation how tried.

If maintained.

If dismissed.

Removal of the suit, &c.

Remittal if dismissed.

Amount of judgment may be levied by instalments

Proviso as to total delay.

LXVI. And be it enacted, That the Circuit Court may, if the Judge holding the same shall think proper, order the sum for which judgment may have been given to be levied by instalments; Provided the delay allowed for the payment of the last instalment shall not exceed the space of three months from the day of the judgment; and provided also, that in default of payment of any one such instalment at the time it shall become due, execution may issue in satisfaction of the judgment, as if such delay had not been granted.

What shall be a sufficient certificate of costs in the Circuit Court.

LXVII. And be it enacted, That the certificate of the Clerk of the Circuit Court, that the costs in any suit or action or proceeding in such Court, amount to a sum named in such certificate (the sum allowed to witnesses having been previously approved by a Judge or Circuit Judge, as the case may be) shall be sufficient proof of the amount of such costs, provided a detailed bill or account of the same, signed by the said Clerk be annexed to such certificate, and execution may issue accordingly for such costs, without any other or further taxation thereof; nor shall it be necessary that any Writ of Execution issuing out of the Circuit Court be signed or endorsed by any Judge; any law, usage or custom to the contrary notwithstanding.

As to Writs of Execution.

Fees to be as per Tariff.

No others to be taken.

Penalty for taking other or greater fees.

Application of penalty.

LXVIII. And be it enacted, That in all suits, actions and proceedings in the Circuit Court, the fees to be specified in the Tariff then in force under this Act for the Circuit Court, shall be deemed and taken to be the lawful fees for the discharge of the several duties therein mentioned; and no other fees or emoluments shall be received or taken upon any pretence whatever for any act done or service performed under the authority of this Act; and if any Officer or person shall receive any other or greater fee or emolument than shall be specified in the said Tariff, for any of the duties aforesaid, he shall forfeit the sum of twenty pounds currency for each such offence, which penalty shall and may be recovered by civil action in the Circuit Court; and one half of such penalty shall belong to Her Majesty, Her Heirs and Successors, and the other half to the person who shall sue for the same.

Tariff to be posted openly.

Penalty for neglect.

LXIX. And be it enacted, That each of the Clerks of the Circuit Court shall cause to be continually and openly posted as well in his Office as in some conspicuous place in the Hall or apartment in which the Circuit Court shall be held, a fair and legible copy of the Tariff of Fees to be made by the Superior Court, and a notice of the penalty to which any person will become liable for receiving any other or greater fee than is set forth in the said Tariff, and in default of so doing, such Clerk shall be deemed guilty of a misdemeanor, and shall be liable to be punished accordingly.

Execution of judgments of the Circuit Court.

To whom the Writ shall be addressed, &c.

LXX. And be it enacted, That in every case where judgment shall be rendered in the Circuit Court, awarding or adjudging the payment of any sum of money, it shall and may be lawful for the Clerk of the Court, at the expiration of fifteen days after the rendering of the judgment, to issue under the Seal of the Court, a Writ of *Fieri Facias* against goods and chattels; which Writ shall be signed by him, and made returnable to the Court, and shall be directed to any of the Bailiffs of the Superior Court appointed for the District in which the judgment shall have been rendered, who is hereby authorized to levy the sum of money mentioned in such Writ, and the costs of execution, upon and from the goods and chattels of the party against whom such judgment shall have been rendered, which shall be found within the District, in the same manner, and according to the same rules and regulations of law, by and under which

which any Sheriff may levy money by virtue of a Writ of *Fieri Facias* issuing out of any of Her Majesty's Courts of Civil Jurisdiction in Lower-Canada; but the said Bailiff shall not be entitled, out of the monies so levied by him, to the Commission of two and a half per cent. in such case by law allowed to Sheriffs, or to any Commission whatever; and the said Writ, on or before the day fixed for the return thereof, shall be by the said Bailiff returned into the Circuit Court at the place where it shall have issued, with his proceedings thereon; Provided always, that for the satisfaction of any such judgment, execution shall (except in hypothecary actions) go only against the moveable property of the party condemned, in cases where the sum of money awarded by the judgment shall not exceed Ten pounds currency; and that in cases where the said sum of money so awarded shall exceed Ten pounds currency, execution shall go not only against the moveable, but also against the immoveable property of the party condemned, as it shall also in all hypothecary actions against the immoveable property declared by the judgment to be hypothecated for the payment of the sum for which such judgment shall have been rendered, whatever be the amount demanded or recovered in the suit; and when execution upon any such judgment shall be sued out against the immoveable property, a Writ of *Fieri Facias de Terris* shall be issued from the Circuit Court at the place where the judgment shall have been rendered, under the Seal of the said Court, and signed by the Clerk thereof, and such Writ shall be made returnable to the Superior Court in the District in which the judgment shall have been rendered, and shall be directed to the Sheriff of the said District, who is hereby authorized to levy the sum of money mentioned in such Writ, and the costs of execution, upon and from the immoveable property of the party against whom such judgment shall have been rendered, or upon and from the immoveable property declared by the judgment to be so hypothecated as aforesaid (as the case may be) in the manner and according to the rules and regulations of law, by and under which any Sheriff may levy money by virtue of a Writ of *Fieri Facias de Terris* issuing out of any of Her Majesty's Courts of Civil Jurisdiction in Lower-Canada; and the said Writ, on or before the day fixed for the return thereof, shall be by the said Sheriff returned into the Superior Court, with his proceedings thereupon, in the same manner as if such Writ had issued from the said Court; and all ulterior proceedings of what kind soever, consequent upon the issuing of such Writ, or necessary for the execution thereof, as well with regard to the Plaintiff and Defendant as with regard to other parties, who, according to law, may have intervened in the cause by opposition or otherwise, shall be had in the Superior Court, as effectually and in the same manner as if the cause in which such Writ shall have issued had been originally brought and determined in the said Court.

LXXI. And be it enacted, That when the party against whom judgment shall have been rendered in the Circuit Court, shall not have, within the District in which such judgment shall have been rendered, sufficient goods, chattels, lands or tenements to satisfy the said judgment in capital, interest, and costs, but shall have goods, chattels, lands or tenements within any other District in Lower-Canada, an *alias* Writ *de bonis* or *de terris*, as the case may be, shall issue from the Court at the place where the judgment shall have been rendered, under the Seal of the said Court, and signed by the Clerk thereof; which *alias* Writ shall be made returnable to the Court out of which it shall issue, if it be a Writ *de bonis*, and to the Superior Court in the District in which the judgment shall have been rendered, if it be a Writ *de terris*, and shall be directed to the Sheriff of such other District; and such *alias* Writ shall be executed in the latter District by the Sheriff thereof, as if it were a Writ of Execution issued from the Superior

No percentage to Bailiff.

Return of Writ.

Proviso as to cases under £10.

Above £10.

Hypothecary actions.

Execution against immoveables.

When returnable.

To whom addressed.

Return.

Ulterior proceedings, oppositions, &c.

When the property of the executee is in another District.

Writ where returnable.

How executed.

And returned. Superior Court, and in the same manner and according to the same rules and regulations of law; and the said Writ shall be, by the said last mentioned Sheriff, with his proceedings thereon, duly returned into the Court from which it shall have been issued, if it be a Writ *de bonis*, or into the Superior Court in the District in which the said judgment shall have been rendered, if it be a Writ *de terris*; and in the latter case, all ulterior proceedings of what kind soever consequent upon the issuing of such Writ *de terris*, or necessary for the execution thereof, as well with regard to the plaintiff and defendant, as with regard to other parties who, in due course of law, may have intervened in the cause by opposition or otherwise, shall be had in the Court last above mentioned, as effectually and in the same manner as if the cause in which such Writ shall have issued had been originally brought and determined in such last mentioned Court: Provided always, that in all cases where execution may issue in any hypothecary action against any immoveable property declared by the judgment to be hypothecated for the payment of the money to be levied under such execution, and *délaissé* under such judgment, and situate in a District other than that in which the Writ shall issue, such Writ shall be issued, executed and returned, and the subsequent proceedings relative to the same shall be had as herein provided with regard to *alias* Writs *de terris*, without its being necessary that any other Writ should previously issue.

Proviso as to property hypothecated and *délaissé*.

S. Court may call up the record in cases where lands are seized.

LXXII. And be it enacted, That when any such Writ *de terris*, issuing from the Circuit Court, shall have been, in the manner hereinbefore provided, returned into the Superior Court, it shall be lawful for the said last named Court, in its discretion, to direct the record of the cause in which such Writ of Execution shall have issued, to be removed into the Superior Court, and such removal shall be made on an order made by the said Court, and addressed to the Clerk of the Circuit Court at the place from which the record is to be removed, in the same manner and according to the same regulations as are hereinbefore provided for the removal of records in other cases into the Superior Court.

Oppositions to Writs *de bonis* where returnable.

LXXIII. And be it enacted, That if any opposition be made to the execution of any Writ *de bonis* issued from the Circuit Court, such opposition shall be made returnable to the Circuit Court at the place where the cause shall be pending, or at the place in the same District (or in the District of Gaspé, in the same County) where the Circuit Judge or Circuit Judges shall reside, if the Term at such last named place be nearer to the day on which the opposition shall have been allowed, there to be heard and determined; and when such opposition shall have been made returnable at such last mentioned place, the Court shall have power, if it deem it necessary, to order the removal of the record in the original suit or action from the place where the judgment was rendered to the place where the Circuit Judge or Judges shall reside, and such removal shall be made in the manner hereinbefore provided for the removal of records in similar cases; and the Bailiff charged with the execution of the Writ shall, immediately after he shall have been served with a true copy of the said opposition, return the same, and the Writ with his proceedings thereon, to the Court to which the opposition shall have been so made returnable; and when final judgment shall have been given on any such opposition, the Writ of Execution and all proceedings thereon, with a true copy of the said judgment, (and the record in the original suit or action, if it shall have been removed) shall be remitted to the Circuit Court at the place where the judgment was rendered, where further proceedings shall thereupon be had, as to law may appertain: Provided always, that the *fiat* or order to stay proceedings upon such

Removal of record in certain cases.

Duty of Bailiff receiving opposition.

Proceedings on final judgment.

Proviso as to *fiat* to stay

such Writ *de bonis*, in consequence of any such opposition, and to make such opposition returnable as aforesaid, may be made by any Circuit Judge, although he be not then within the limits of the Circuit, or by the Clerk of the Circuit Court, and to that effect such Circuit Judge or Clerk is hereby authorized to administer all oaths in such cases required by law.

proceedings on
oppositions.

LXXIV. And be it enacted, That the Circuit Court, and any Judge who might hold the same at any place, shall as well in Court as out of Court, in term or out of term or in vacation, have and may exercise within the said Circuits respectively, and concurrently with the Judges of the Superior Court, the same power and authority as are vested in the Superior Court and the Judges thereof, in what respects the Probate of Wills, the election and appointment of Tutors and Curators, and the taking of the counsel and opinion of relations and friends in cases where the same are by law required to be taken, the closing of inventories, attestation of accounts, *insinuations*, affixing and taking off seals of safe custody, and other acts of the same nature requiring dispatch; and the proceedings in all such cases shall form part of the records of the Circuit Court in the Circuit in which they shall be had: Provided always, that the appointments and orders made by any Judge under the authority of this section shall be liable to be set aside by the Superior Court in the District, in the manner and under the provisions of law, in and under which appointments and orders of like nature made by a single Judge might be set aside immediately before the time when this Act shall come fully into effect.

Certain pow-
ers vested in
Circuit Judges
as to matters
requiring dis-
patch.

Proviso: how
orders made in
such matters
may be set
aside.

LXXV. And be it enacted, That Clerks of the Circuit Court shall be appointed for the Montreal Circuit, the Quebec Circuit, the Three-Rivers Circuit, and the Sherbrooke Circuit, respectively; and from time to time, and as vacancies shall occur in the several Circuits in Lower-Canada, by death, resignation, removal from office or otherwise, Clerks of the Circuit Court shall be appointed in and for such Circuits, respectively; and every Clerk of the Circuit Court shall have power, by an instrument under his hand and seal, to appoint a Deputy, who shall act as such only in the case of the absence or sickness of such Clerk, and such instrument shall be entered at full length in the Register of the Court: Provided always, that the Clerk may at all times remove such Deputy and appoint another in his place.

Clerks of the
Circuit Court
to be appoint-
ed, &c.

May have
Deputies.

Proviso.

LXXVI. And be it enacted, That it shall be lawful for any person under the age of twenty-one years and above the age of fourteen years, to prosecute any suit in the proper Circuit Court, for any sum of money not exceeding six pounds five shillings, currency, which may be due to him for wages, in the same manner as if he were of full age; any law to the contrary notwithstanding.

Minors may
sue for wages
in C. Court.

LXXVII. And be it enacted, That the said Circuit Court shall be holden in every year at the times and places hereinafter appointed; and the local extent and limits of the jurisdiction of the said Circuit Court, sitting at such places respectively, shall, so far as regards the commencement of any suit, action or proceeding, be as follows, that is to say:

Places of
holding Cir-
cuit Courts,
and extent of
Circuits.

IN THE SAID DISTRICT OF QUEBEC:

In the City of Quebec, in and for the Circuit to be called the Quebec Circuit, on the last six juridical days of each month in the year, except August, and the said Circuit shall

Quebec Cir-
cuit.

shall include and consist of all that part of the said District of Quebec which shall not be included within any of the other Circuits hereinafter described ;

Rimouski
Circuit.

In the Parish of St. Germain, in and for the Circuit called and to be called the Rimouski Circuit, from the nineteenth to the twenty-eighth day, inclusively, of each of the months of January, May and September, which said Circuit doth and shall include and consist of the County of Rimouski, except the Parishes of Rivière-du-Loup and Cacona ;

Kamouraska
Circuit.

In the Parish of St. Louis de Kamouraska, in and for the Circuit called and to be called the Kamouraska Circuit, from the first to the tenth day, inclusively, of each of the months of February, June and October, which said Circuit doth and shall include and consist of the County of Kamouraska, and the Parishes of Rivière-du-Loup and Cacona ;

St. Thomas
Circuit.

In the Parish of St. Thomas, in and for the Circuit called and to be called the St. Thomas Circuit, from the thirteenth to the twenty-second day, inclusively, of each of the months of February, June and October, which said Circuit doth and shall include and consist of the County of L'Islet, including so much of the Parish of St. Pierre, Rivière du Sud, as may be within the County of Bellechasse and the Parishes of Berthier, St. Vallier, St. Michel and St. François, Rivière du Sud, in the County of Bellechasse ;

BeauceCircuit.

In the Parish of Ste. Marie, Nouvelle Beauce, in and for the Circuit called and to be called the Beauce Circuit, from the first to the tenth day, inclusively, of each of the months of March, July and November, which said Circuit doth and shall include and consist of the County of Dorchester, (except the Seigniory of Lauzon) ;

Leeds Circuit.

In the Township of Leeds, in and for the Circuit called and to be called the Leeds Circuit, from the sixteenth to the twenty-fifth day of February, inclusively, from the nineteenth to the twenty-eighth of June, inclusively, and from the twentieth to the twenty-ninth of October, inclusively ; which said Circuit doth and shall include and consist of the County of Megantic, and the Parishes of St. Sylvester and St. Giles, in the County of Lotbinière ;

Lotbinière
Circuit.

In the Parish of Lotbinière in and for the Circuit called and to be called the Lotbinière Circuit, from the thirteenth to the twenty-second day, inclusively, of each of the months of March, July and November ; which said Circuit shall include and consist of the County of Lotbinière, except the Parishes of St. Sylvester and St. Giles ;

Portneuf Cir-
cuit.

In the Parish of Cap Santé, in and for the Circuit called and to be called the Portneuf Circuit, from the seventh to the sixteenth day, inclusively, of each of the months of January, May and September ; which said Circuit shall include and consist of the County of Portneuf ;

Saguenay
Circuit.

In the Parish of Les Eboulements, in and for the Circuit called and to be called the Saguenay Circuit, from the first to the tenth day, inclusively, of each of the months of March, July and October ; which said Circuit shall include and consist of that part of the County of Saguenay, which is bounded as follows, that is to say : on the west by the County of Montmorency, on the north by the parallel of the forty-eighth degree of north latitude,

latitude, from the County of Montmorency, until it meets the prolongation of the eastern line of the Township of St. Jean on the River Saguenay, and thence by the said prolongation and the said line, as far as the River Saguenay, and thence on the west by a line to be drawn astronomically north to the limits of the Province; on the north and on the east by the limits of the Province, and on the south-east by the River St. Lawrence, upwards from the limits of the Province to the County of Montmorency;

At the Village of Chicoutimi, in and for the Circuit to be called the Chicoutimi Circuit, on the last six juridical days of each of the months of January, February, May, June, September and November in each year; which said Circuit, shall include and consist of that part of the County of Saguenay, not hereinbefore included in the Saguenay Circuit, and those parts of the Counties of Quebec and Montmorency, respectively, which lie north of the parallel of the forty-eighth degree of north latitude.

Chicoutimi
Circuit.

IN THE SAID DISTRICT OF MONTREAL :

In the City of Montreal, in and for the Circuit to be called the Montreal Circuit, on the last six juridical days of each month in the year except August, and the said Circuit shall include and consist of all that part of the said District of Montreal which shall not be within any of the other Circuits hereinafter described;

Montreal Cir-
cuit.

In the Parish of Berthier, in and for the Circuit called and to be called the Berthier Circuit, from the twenty-first to the thirtieth day, inclusively, of each of the months of January, May and September; which said Circuit doth and shall include and consist of the County of Berthier, and all the Islands in the River St. Lawrence which lie within the County of Richelieu, except those on the south-side of the main or ship channel;

Berthier Cir-
cuit.

In the Parish of St. Pierre de l'Assomption, in and for the Circuit called and to be called the Assumption Circuit, from the first to the tenth day, inclusively, of each of the months of March, July and November; which said Circuit doth and shall include and consist of the County of Leinster, except the Parishes of Lachenaye, St. Henri de Mascouche and St. Lin;

L'Assomption
Circuit.

In the Parish of St. Louis de Terrebonne, in and for the Circuit called and to be called the Terrebonne Circuit, from the twelfth to the twenty-first day, inclusively, of each of the months of March, July and November; which said Circuit doth and shall include and consist of the County of Terrebonne, and the said Parishes of Lachenaye, St. Henri de Mascouche and St. Lin, in the County of Leinster;

Terrebonne
Circuit.

In the Parish of St. Benoit, in and for the Circuit called and to be called the Two Mountains Circuit, from the seventh to the sixteenth day inclusively, of each of the months of January, May and September; which said Circuit doth and shall include and consist of the County of Two Mountains, except Isle Bizarre;

Two Moun-
tains Circuit.

At the Village of Aylmer, in and for the Circuit called and to be called the Ottawa Circuit, from the twentieth to the twenty-ninth day inclusively, of each of the months of January, May and September; which said Circuit doth and shall include and consist of the County of Ottawa;

Ottawa Cir-
cuit.

In

Vaudreuil Circuit.

In the Parish of St. Michel de Vaudreuil, in and for the Circuit called and to be called the Vaudreuil Circuit, from the first to the tenth day inclusively, of each of the months of March, July and November, which said Circuit doth and shall include and consist of the County of Vaudreuil ;

Beauharnois Circuit.

In the Parish of Ste. Martine, in and for the Circuit called and to be called the Beauharnois Circuit, from the twelfth to the twenty-first day, inclusively, of each of the months of March, July and November ; which said Circuit doth and shall include and consist of the County of Beauharnois, except the Township of Hemmingford ;

St. John Circuit.

In the Parish of St. John the Evangelist, in and for the Circuit called and to be called the St. John's Circuit, from the tenth to the nineteenth day, inclusively, of each of the months of February, June and October ; which said Circuit doth and shall include and consist of the Seigniories of Lacolle and De Léry, and the Islands in the River Richelieu, lying wholly or partly opposite the same, and the Township of Sherrington, all in the County of Huntingdon, the Township of Hemmingford, in the County of Beauharnois, the Parishes of St. John the Evangelist and St. Luc, in the County of Chambly, and the Parish of Ste. Marguerite de Blairfindie, lying partly in the County of Chambly and partly in that of Huntingdon, the County of Missisquoi, except the Townships of Dunham and Sutton, and the County of Rouville, except the Parishes of St. Mathias, St. Hilaire and St. Jean Baptiste de Rouville ;

But see Cap. 39, correcting this Section.

Missisquoi Circuit.

At Nelsonville, in the Township of Dunham, in and for the Circuit called and to be called the Missisquoi Circuit, from the twenty-first to the thirtieth day inclusively, of each of the months of February, June and October ; which said Circuit doth and shall include and consist of the County of Shefford (except the Township of Milton,) of so much of the County of Stanstead as does not lie in the District of St. Francis, and of the Townships of Dunham, Stanbridge and Sutton, in the County of Missisquoi, and the Parishes of St. Armand East and St. Armand West ;

See Cap. 39.

St. Hyacinthe Circuit.

At the Village of St. Hyacinthe, in and for the Circuit called and to be called the St. Hyacinthe Circuit, from the tenth to the nineteenth day, inclusively, of each of the months of February, June and October ; which said Circuit doth and shall include and consist of the County of St Hyacinthe, the Township of Milton, in the County of Shefford, the Parishes of St. Charles and St. Barnabé, in the County of Richelieu, and the Parishes of St. Hilaire and St. Jean Baptiste de Rouville, in the County of Rouville ;

Richelieu Circuit.

In the Parish of St. Ours, in and for the Circuit called and to be called the Richelieu Circuit, from the twenty-first to the thirtieth day inclusively, of each of the months of February, June and October ; which said Circuit doth and shall include and consist of the County of Richelieu, (except the Parishes of St. Charles and St. Barnabé, and the Islands of the said County which lie in the River St. Lawrence, on the north-side of the main or ship channel,) and the Parishes of Contreccœur and St. Antoine, in the County of Verchères.

IN THE SAID DISTRICT OF THREE-RIVERS :

Three-Rivers Circuit.

At the Town of Three-Rivers, in and for the Circuit called and to be called the Three-Rivers Circuit, on the last six juridical days of the months of March, May, June, September,

September, November and December in each year ; and the said Circuit shall include and consist of all the said District of Three-Rivers.

IN THE SAID DISTRICT OF ST. FRANCIS :

At the Town of Sherbrooke, in and for the Circuit to be called the Sherbrooke Circuit, on the last six juridical days of the months of February, March, June, September and October, and on the first six juridical days of the month of December in each year ; and the said Circuit shall include and consist of all that part of the said District of St. Francis which shall not be within any of the other Circuits hereinafter described ;

Sherbrooke
Circuit.

At the Village of Richmond, in the Township of Shipton, in and for the Circuit called and to be called the Richmond Circuit, from the tenth to the nineteenth day, inclusively, of each of the months of March and September ; which said Circuit doth and shall include and consist of the Townships of Durham, Kingsey, Tingwick and Chester, in the County of Drummond, and the Townships of Shipton, Melbourne, Brompton and Windsor, in the County of Sherbrooke ;

Richmond
Circuit.

At Stanstead Plain, in the Township of Stanstead, in and for the Circuit called and to be called the Stanstead Circuit, from the fifteenth to the twenty-fourth day, inclusively, of each of the months of May and November ; which said Circuit doth and shall include and consist of the Townships of Stanstead, Barnston, Barford, and Hatley, and so much of the Township of Bolton as lies within the District of St. Francis.

Stanstead Cir-
cuit.

IN THE SAID DISTRICT OF GASPÉ :

At the places and times appointed for holding of the Circuit Courts in the said District, in and by the Act passed in the Seventh year of Her Majesty's Reign, and intituled, *An Act to establish the District of Gaspé, and to provide for the due administration of Justice therein*, or as may be provided for the holding of the Circuit Court therein, by any Act of the present Session amending the said Act : Provided always, that the Governor may by any Proclamation or Proclamations to be issued from time to time by and with the advice of the Executive Council, alter the times or any of the times of holding the Superior Court in any District or Districts, or the times or any of the times of holding the Circuit Court in any Circuit or Circuits (including those in the District of Gaspé) and may declare that such alteration shall take place from and after a time to be appointed in each case, in any such proclamation, and may in like manner again alter the times of holding such Courts or any of them when and so often as it shall appear to him that the public convenience and the due administration of justice shall require it : and from the time of the issuing of any such Proclamation, the Judges and Clerks of such Courts and all other persons concerned shall govern themselves as if the times thereby appointed for holding the same had been appointed for that purpose by this Act, and shall fix the Return Days of all Writs and Process which ought to be returned in Term accordingly ; and any Writ or Process which is only returnable in Term, and which shall before the issuing of any Proclamation or before it shall have been known to the Clerk or Judge of the Court, have been made returnable on some day which in consequence of such Proclamation will not be a day in Term on which the same can be returned, shall be returnable on the Return Day next after that on which it was made returnable : Provided always, that neither the number of times at

District of
Gaspé.

7 V. c. 17.

Proviso :
Governor in
Council may
alter the time
of holding
Terms of
Superior or
Circuit Court.

As to Returns
of Process in
certain cases.

Proviso :
Number and
which

length of
Terms not to
be altered.

Proviso as to
suits com-
menced at
places where
the Circuit
Court will not
be held after
this Act comes
into effect.

Transmission
of records, &c.

As to Returns
of Process is-
sued before
this Act comes
into effect and
returnable
after that time.

Its effect.

Changes in
the limits of
any Circuit
not to affect
pending suits.

Return days in
appealable and
non appealable
cases.

Power of
Judge to close
or prolong the
Term.

Proviso.
Clerk may re-
ceive returns,
&c. in certain
cases.

which the Circuit Court shall be held annually in any Circuit, nor the number of days included in the Terms shall be altered by any Proclamation under this Section: Provided also, that all actions, suits and proceedings commenced before the time when this Act shall come fully into effect in a Circuit Court held at any place at which after the said time the Circuit Court will not be held, shall be transmitted into the Circuit Court, and shall be continued and completed therein, at the place where the said Court shall be held for the Circuit in which the place of sitting of the Circuit Court in which they were commenced shall be included, as if they had been commenced therein; and all papers, writings, documents and proceedings in the Office of the Clerk of the Circuit Court at the place where no sittings of the Circuit Court are to be held under this Act, or in his custody, whether the same relate to any action, suit or proceeding therein then pending or completed before the time when this Act shall come fully into effect, shall forthwith after the said time be transmitted into the Circuit Court, and shall be kept at the Office of the Clerk of the said Court at the place where pending proceedings of the same Court are to be completed as aforesaid, and shall make part of the Records and Muniments of the Circuit Court at such place; and every Writ or Process issued before the time when this Act shall come fully into effect, out of the Circuit Court at any place where no sitting of the said Court will be held after the said time, and made returnable after the said time, shall be returned into the Circuit Court at the place where pending proceedings of the same Court are to be completed as aforesaid, and on the day on which it shall have been made returnable, unless it be in a non-appealable case, and such day shall happen not to be a Return Day at such place in non-appealable cases, and it shall then be returned on the Return Day for such cases which shall be next after the day on which it shall have been made returnable; and in either case it shall have the same and no other effect, as if it had issued from the Circuit Court, and had been made returnable on the day, and at the place on and at which it is to be returned.

LXXVIII. Provided always, and be it enacted, That no change made by this Act in the limits of any Circuit, shall affect any action, suit or proceeding commenced in any Circuit Court before the time when this Act shall come fully into effect, but the same, and all proceedings and matters incident thereto, whether before or after execution, shall be continued and dealt with as if the limits of the Circuit in which such action, suit or proceeding shall have been commenced, had not been changed or affected by this Act.

LXXIX. Provided always, and be it enacted, That for all appealable cases, every day in Term or in vacation not being a Sunday or Holy-day, shall be a Return Day, but the six first juridical days only of each Term shall be Return Days in non-appealable cases; and at the close of the sixth juridical day, or at any time thereafter, the Judge may, if there be no business before the Court, close the sitting thereof until the then next Term, or may, in his discretion, and if it be requisite to the dispatch of the business before the Court, prolong the Term until such business be dispatched, or his duty shall require his attendance at some other place; Provided also, that if by illness, accident or any other cause, the Judge by whom any Circuit Court ought to be holden shall not be present on the first or any other juridical day, being a Return Day in any Term, it shall be lawful for the Clerk of such Court to receive all Returns to be made on such day, in non-appealable cases, and to cause any defendant or party in any such case, summoned to appear on such day, to be called, and to enter his appearance, or record his default, notwithstanding the absence of the Judge.

LXXX. And be it enacted, That from and after the day to be appointed for that purpose in any Proclamation to be issued by the Governor appointing such day, and declaring that a proper Gaol hath been erected at Chicoutimi aforesaid in and for the Chicoutimi Circuit, General and Special Sessions of the Peace shall be held therein, the said General Sessions being held at such times as shall be appointed by the Governor in and by the Proclamation aforesaid, in like manner and with like powers and duties as in the several Districts of Lower-Canada respectively; and a Clerk of the Peace and other requisite officers may be appointed accordingly; and the Justices of the Peace for the District of Quebec shall be the Justices by whom such Sessions of the Peace shall be held, but the said Chicoutimi Circuit shall not be detached from the said District, except only with regard to such Sessions and matters cognizable thereat.

Sessions of the Peace, &c. to be held in Chicoutimi Circuit when a Gaol is erected.

Clerk of the Peace to be appointed. Who shall hold the Sessions, &c.

LXXXI. And be it enacted, That from and after the time when this Act shall come fully into effect, no Commissioners' Court shall be held in the City of Quebec or in the City of Montreal or in the town and parish of Three-Rivers under the Act passed in the Seventh year of Her Majesty's Reign, and intituled, *An Act to provide for the Summary Trial of Small Causes in Lower-Canada*, but that all actions, suits, and proceedings theretofore commenced in the Commissioners' Court at either of the said Cities, or town and parish of Three-Rivers, shall be transmitted into the Circuit Court, and be continued and completed therein, at the City or town in which the same were respectively commenced, as if they had been commenced therein, or the said Circuit Court were one and the same Court with the Commissioners' Court at such place; and all papers, writings, documents and proceedings in the office of the Clerk of the Commissioners' Court at either of the said Cities, or town and parish of Three-Rivers, or in his custody, whether the same relate to any action, suit or proceeding therein, then pending or completed before the time when this Act shall come fully into effect, shall forthwith after the said time, be transmitted into the Circuit Court, and shall be kept in the office of the Clerk of the said Court at the same place, and shall make part of the records and muniments of the said Court; and every Summons or Process issued before the time when this Act shall come fully into effect, out of the Commissioners' Court at either of the said Cities or town and parish of Three-Rivers respectively, and made returnable after the said time, shall be returned into the Circuit Court at the same place and on the day on which it shall have been made returnable, unless such day should happen not to be a return day at such place in non-appealable cases in the Circuit Court, and it shall then be returned on the return day for such cases, which shall be next after the day on which it shall have been made returnable, and in either case, it shall then have the same effect and no other, as if it had issued from the Circuit Court, and had been made returnable on such day and at such place.

No Commissioners' Court to be held in Quebec, Montreal or Three-Rivers.

7 V. c. 19.

But pending suits to be completed in the Circuit Court.

Papers and documents of Commissioners' Courts to be transmitted to Circuit Court.

As to Return of Process issued before this Act shall be in force.

LXXXII. And be it enacted, That whenever the jurisdiction of any Court or the right to appeal from any judgment of any Court, is dependent upon the amount in dispute, such amount shall be understood to be that demanded, and not that recovered, if they be different; but if the amount recovered be such that it might have been recovered in any inferior Court, the Plaintiff shall recover such costs only as he would have recovered if the suit had been brought in such inferior Court, unless the Court in which the suit is brought shall order otherwise.

Amount demanded to govern in certain cases.

Provision as to costs.

Mode of confessing judgment in appealable cases in any Court.

Judgment on such confession if accepted.

And in non-appealable cases.

Effect of a confession not accepted by the Plaintiff.

Facts alleged in pleadings and not denied, &c., to be deemed admitted.

As to costs of proving facts neither admitted or denied.

Rules of construction as to pleadings.

Court may allow amendment.

No form of action or of words to be requisite.

LXXXIII. And be it enacted, That any party desiring to confess judgment in any cause, either in the Superior Court, or in the Circuit Court, (except in non-appealable cases in the latter Court,) shall file an appearance therein, and may then file a confession of judgment in writing, signed by him, (or by an Attorney thereunto specially authorized by an authentic *Acte* to be filed with it,) and countersigned by his Attorney *ad litem*; and if the Plaintiff shall accept such confession, he may forthwith inscribe the case for judgment on the same, and the Prothonotary or Clerk shall thereupon draw up a judgment accordingly, which being signed by the Plaintiff or his Attorney *ad litem*, shall be held to be the judgment of the Court, and recorded and executed accordingly; and in non-appealable cases in the Circuit Court, Judgment may be confessed orally in open Court.

LXXXIV. And be it enacted, That any confession of judgment filed or made orally as aforesaid, and not accepted by the Plaintiff, shall, if such Plaintiff shall not, by the judgment in the cause, recover more than he would have obtained judgment for under such confession, have the same effect, with regard to all costs incurred after the filing or making of such confession as if it had been accepted by the Plaintiff at the time of the filing or making thereof, and in any such case the Defendant shall be entitled to recover from the Plaintiff such costs, incurred by him after the filing or making of such confession, as may be awarded to him by the Court in its discretion.

LXXXV. And be it enacted, That in any pleading in any contested civil case, every allegation of fact, the truth of which the opposite party shall not expressly deny or declare to be unknown to him, shall be held to be admitted by him; and the costs of proving any such allegation of fact or any document proved in evidence, shall always be in the discretion of the Court, so that the whole or any part of such costs may be awarded against a party denying or not admitting any fact or document which in the opinion of the Court he must have known to be true or genuine, whatever be the event of the case.

LXXXVI. And be it enacted, That to all allegations of fact in any pleading, the ordinary rules of legal construction shall apply, so that it shall be sufficient to support any pleading that the facts alleged in it agree sufficiently with those proved to maintain the conclusions of such pleading or some of them, and that the Court shall be of opinion that the opposite party could not have been misled by such pleading as to the real nature and effect of the facts intended to be therein alleged and to be proved under such pleading; and the Court may in its discretion, at any time before judgment, and on such conditions as it shall deem just, allow any pleading to be amended, so as to agree with the facts proved, if the Court shall be of opinion that the ends of justice will be promoted by allowing such amendment.

LXXXVII. And be it declared and enacted, That in civil cases no form of action or of words is or shall be necessary in any declaration, opposition or other pleading or paper, but the parties may and shall respectively state *bona fide*, and to the best of their belief, the real facts on which they intend to rely, and which they allege to be true and offer to prove, in plain and concise language, to the interpretation of which the rules of construction applicable to such language in the ordinary transactions of life do and shall apply, so that no allegation or statement may or shall be held to be insufficiently made, if it would be ordinarily understood to have the meaning intended by the party using it.

LXXXVIII.

LXXXVIII. And be it enacted, That no trial by Jury shall be allowed in any civil suit or action, wherein the sum of money or value of the thing demanded or in dispute shall not exceed twenty pounds currency, unless the same shall have been instituted before the time when this Act shall come fully into effect, and one of the parties thereto shall before the said time have declared his choice and option to have a trial by Jury therein.

No trial by Jury in cases under £20.

LXXXIX. And for the avoidance of doubts—Be it declared and enacted, That any party to any suit or action of a commercial nature may be examined on *faits et articles*, in the like manner as parties may be examined in other cases; any law touching the rules of evidence to be observed in such cases, to the contrary notwithstanding.

Faits et articles in commercial cases.

XC. And be it enacted, That if the day on which any thing is by this Act directed to be done, shall be a Sunday or Holy-day, then such thing shall and may be done with like effect on the next following juridical day.

As to Sundays and Holy-days.

XCI. And be it enacted, That the word "Sterling," in any Act or Ordinance relative to the administration of justice, and in force in Lower-Canada, shall, with regard to any suit or action commenced after the twentieth day of April, one thousand eight hundred and forty-four, or to be commenced after this Act shall come fully into effect, and with regard to all proceedings therein, be held to have the meaning assigned to the said word by the Act of the Legislature of this Province, passed in the Session held in the fourth and fifth years of Her Majesty's Reign, and intituled, *An Act to regulate the Currency of this Province*, that is to say: each pound sterling, in any sum mentioned in such Act or Ordinance, shall be held to be equal to one pound, four shillings and four pence, currency.

Word "Sterling" how to apply in judicature Acts.

XCII. And be it enacted, That it shall not be necessary that any *demande* in intervention should be allowed by any Court or any Judge, but such *demande* may be at once filed at the Office of the Prothonotary or Clerk of the Court, and the mere filing thereof shall stay proceedings in the case during three days; and if during that time it shall be served on the proper parties, and the return of such service shall be filed at the Office aforesaid, proceedings shall be had as in an action of the same nature; but if such return be not so filed, such *demande* in intervention shall be *ipso facto* null, and any party may demand and obtain from the Prothonotary or Clerk, *acte* of the non-filing of such return, and may file such *acte*, which shall have the same effect as a judgment pronouncing such nullity, and the parties may thereupon proceed as if such *demande* in intervention had never been filed.

Demande in intervention need not be allowed by a Judge, &c., but must be filed, &c.

Nullity for non-compliance with this section.

XCIII. And be it enacted, That if in any case, either in the Superior Court or in the Circuit Court, any Writ shall require to be executed by the Sheriffs of two or more Districts, or by a Bailiff in one District and by a Sheriff or Sheriffs in another or others, then such Writ shall be addressed to such Sheriff or Sheriffs, and to any Bailiff of the Superior Court, as the case may require, and as many originals shall be made as there may be Districts in which it is to be executed; but this shall not affect any provision herein made with regard to *alias* Writs.

Provision for Writs which are to be executed by several Officers.

XCIV. And be it enacted, That in any suit or action brought or to be brought against any person who shall have left his domicile in Lower-Canada, or against any person who shall have had no domicile in Lower-Canada, but shall have personal or real

As to suits against absentees.

real estate within the same, it shall be lawful for the plaintiff, if such person be not personally served with process, to summon and implead such person, by a Writ issued in the usual way out of the Superior Court, or out of the Circuit Court, in the District or Circuit wherein such person may have had his domicile, or where such property may be situate, and that upon the return of the Sheriff or Bailiff to the Writ, that the defendant cannot be found in the said District or Circuit, it shall be lawful for the Court, or for any Judge thereof in vacation, to order that the defendant shall by an advertisement to be twice inserted in the English language in any newspaper published in that language, and twice in the French language in any newspaper published in that language in Lower-Canada, (such newspapers to be designated by the Court or Judge) be notified to appear and answer to such suit or action within two months after the last insertion of such advertisement; and that upon the neglect of the defendant to appear and answer to such suit or action within the period aforesaid, it shall be lawful for the plaintiff to proceed to trial and judgment as in a case by default.

Advertisement
to be inserted
in newspapers.

Powers under
Lessors and
Lessees' Acts,
and by whom
to be exer-
cised.

Act of L. C. 3
W. 4. c. 1.
Ordinance L.
C. 2 V. (3) c.
47.

Proviso.

XCV. And be it enacted, That all the powers vested in any Judge or Judges of the Superior Court by virtue of this Act and of the Act of the Legislature of Lower-Canada passed in the Third year of the Reign of His late Majesty King William the Fourth, and intituled, *An Act to regulate the exercise of certain rights of Lessors and Lessees*, and the Ordinance of the Legislature of Lower-Canada, passed in the second year of Her Majesty's Reign, and intituled, *An Ordinance to amend and continue the Act to regulate certain rights of Lessors and Lessees*, shall be and are hereby vested in, and may be exercised by any one Judge of the Superior Court, or by any Circuit Judge, in Term or in Vacation, and an appeal shall lie from the judgment of any such Judge or Circuit Judge to the Court of Queen's Bench established by an Act of this Session, in the cases in which an appeal to the Provincial Court of Appeals is given in the said last mentioned Act: but nothing in this section shall be construed to prevent the Superior Court, or any two or more Judges thereof, sitting together, from exercising any of the said powers, if they shall in any case deem it expedient so to do.

How the privi-
lege of the
Lessor on
goods taken in
execution shall
be exercised.

Proviso: duty
of the Bailiff
receiving any
opposition.

XCVI. And be it declared and enacted, That in all cases of the taking of goods and chattels in execution by virtue of a Writ issuing out of any Court in Lower-Canada, wherein a Lessor may claim a privilege or lien for rent, it is not and shall not be lawful for such Lessor to prevent the sale of such goods and chattels by opposition, but it is and shall be lawful for him to deliver to or lodge with the Sheriff or the Bailiff who shall have seized such goods and chattels, his opposition *afin de conserver*, either before or after the sale, and if the same be so delivered or lodged before the sale, the Sheriff or Bailiff shall nevertheless proceed to the sale of the goods and chattels by him seized, and make his return thereof; and upon such return the Lessor shall have his privilege or lien upon the proceeds of the sale of such goods and chattels, and be collocated accordingly; any law, usage or custom to the contrary notwithstanding: Provided always, that when any such opposition or any other opposition *afin de conserver* upon monies levied by virtue of a Writ *de bonis* directed to a Bailiff, shall be delivered to and lodged with the Bailiff before he shall have paid the proceeds of the sale to the party suing out such Writ, it shall be the duty of the Bailiff forthwith to make his return of the said Writ according to law, and to pay over into the hands of the Clerk of the Court in which the case shall be pending the proceeds of the sale to abide the judgment of the Court.

XCVII. And be it enacted, That no recognizance to the Crown shall be estreated in the manner heretofore used, but the sum forfeited by the non-performance of the conditions of such recognizance, shall be recoverable with costs by action in any Court having jurisdiction in civil cases to the amount, at the suit of the Attorney-General or Solicitor-General, or other Officer or party authorized to sue for the Crown; and in any such action it shall be held that the party suing for the Crown is duly empowered so to do, and that the conditions of the recognizance were not performed, and that the sum therein mentioned is therefore due to the Crown, unless the Defendant shall prove the contrary.

Recognizances how to be enforced for the future.

XCVIII. And be it enacted, That all and every the powers and authorities which immediately before the time when this Act shall come fully into effect, shall be by law vested in the several Courts of Queen's Bench in the several Districts of Lower-Canada, and in the Chief Justices and the Justices thereof respectively, relating in any manner or way to the Writ of Habeas Corpus, as well in criminal as in civil cases, and to the awarding or issuing or return thereof, and to the hearing and determining in due course of law, of any question, issue or matter thence arising or incident thereto, shall be and the same are hereby vested as well in the Circuit Court, as in the Superior Court, (concurrently with the other Courts and Judges in whom like powers may by any Act of this Session be vested) and in each and every of the Judges of the said Superior Court and Circuit Court respectively, as well in term as in vacation; which said Judges shall respectively be subject and liable to the same penalty for denying in vacation time, any Writ or Writs of Habeas Corpus, as is by law provided for the denial of a Writ of Habeas Corpus in vacation time by any Judge or Justice, and the said penalty shall be recovered from the Judges of the Superior Court, and Circuit Court respectively, in the like cases and circumstances, and in the same manner as is by law provided with respect to any Judge or Justice.

Habeas Corpus powers vested in the S. Courts, and C. Court, and in the Judges thereof.

Penalty for denying the Writ in vacation.

XCIX. And be it enacted, That whenever under this Act any thing shall have been ordered by the Superior Court, or by the Circuit Court, to be done in any case or matter therein pending, by or before the Superior Court or the Circuit Court, or some Judge or officer thereof, in some District or Circuit other than that in which such case or matter is pending, then after the order shall have been four clear days in the hands of the Prothonotary or Clerk of the Court at the place where such thing is to be done, all parties may proceed as if the case or matter were pending there; and if any notice or paper require to be served on any party in relation to the thing so required to be done, it shall be held validly served if left for him at the office of such Prothonotary or Clerk, unless he shall previously have filed at the Office of that Officer, an Election of Domicile, where such service may be made, within one mile of the said Office, or unless personal service be required by law.

Provision as to service of notices, &c., when any thing is ordered to be done in a place other than that where the suit is pending.

C. And for the purpose of ensuring uniformity in the practice and proceedings of the Superior Court, and Circuit Court in the several Districts and Circuits in Lower-Canada: Be it enacted, That the Superior Court, or any six or more of the Judges thereof, shall and may (and it shall be their duty so to do within one year from the time when this Act shall come fully into effect,) agree upon, make and establish Tariffs of Fees for the Officers of the said Courts respectively, and the Counsel, Advocates and Attornies practising therein, and also such Rules of Practice as shall be requisite for regulating the due conduct of the causes, matters and business

S. Court or any six Judges, to make Tariffs and Rules of Practice for the said Court and for the C. Court.

business before the said Courts, respectively, or the Judges thereof, or any of them, and in Term or out of Term, and all process and proceedings therein or thereunto relating: and such Tariffs of Fees and Rules of Practice respectively, being signed by any six of the said Judges, shall, without further formality, and immediately upon the receipt thereof, or of a copy certified by the Prothonotary of the Superior Court having the custody of the original, be entered by the Prothonotaries and Clerks of the Superior Court, or of the Circuit Court, in the Registers of the said Courts respectively, and shall then have full force and effect in each District or Circuit in which they shall have been so registered, until they shall have been repealed or amended, as hereinafter mentioned, and such repeal or amendment shall have been registered as aforesaid; and the Judges of the Superior Court, or any six or more of them, shall have full power and authority from time to time to repeal or amend the said Tariffs and Rules of Practice, or any part thereof; and such repeal or amendment being signed by any six or more of the said Judges shall be registered as aforesaid by the proper Prothonotaries or Clerks, and shall have effect accordingly: Provided always, that no such Rule of Practice shall be contrary to or inconsistent with this Act, or any other Act or law in force in Lower-Canada, otherwise the same shall be void; and provided also, that until such Tariffs of Fees and Rules of Practice, respectively, shall be made and established as aforesaid, the Tariff of Fees and Rules of Practice in force in each District or Circuit immediately before the time when this Act shall come fully into effect, with regard to the Court of Queen's Bench, or Circuit Court therein, shall continue to be in force, and shall apply to the Superior Court, or Circuit Court and the proceedings therein, as far as regards such District or Circuit; except that in all cases in the Circuit Court in which the sum or value of the thing in dispute shall exceed twenty pounds currency, the Tariff of Fees in force at the time aforesaid with regard to the same class of cases, in the Court of Queen's Bench in any District, shall be the Tariff for the Circuit Court in the same District until a Tariff shall be made for such cases under this Section.

How such Tariffs and Rules shall be authenticated, &c.

They may be amended.

Proviso: such Rules not to be inconsistent with any law.

Proviso: what Tariffs and Rules shall be in force until new ones be made.

Exception; As to cases over £20, in C. Court.

Attornies practising in any Circuit to elect a domicile there.

CI. And be it enacted, That each Attorney practising in the Circuit Court in any Circuit, shall file in the Office of the Clerk of the Court for such Circuit, his election of a domicile within one mile of the place where the Court shall be held in such Circuit, or in default of his so doing, any notice, pleading or other paper in any case before the Court in such Circuit, shall be well served upon him if left for him at the Office of the Clerk of the Court for such Circuit.

Who shall be Commissioners for receiving affidavits C. Court.

CII. And be it enacted, That no Commissioners for receiving affidavits shall be appointed by the Circuit Court, but the Commissioners for receiving affidavits in the Superior Court, shall, in the Districts for which they shall have been respectively appointed, be Commissioners for receiving affidavits to be used in the Circuit Court, without any other appointment.

Prothonotaries and Clerks not to practise as attornies, &c.

CIII. And be it enacted, That no Prothonotary or Clerk of any Circuit Court, shall during his continuance in office, nor shall his Deputy while performing the Duties of the Office, practise as an Advocate, Counsel or Attorney-at-law in Lower Canada.

Bonds given by them to continue in force.

CIV. And be it enacted, That the bonds given before this Act shall come fully into effect by the several Prothonotaries of the Court of Queen's Bench in Lower-Canada and the Clerks of the Circuit Courts therein, and their sureties for the due performance of

of the official duties of such Prothonotaries and Clerks respectively, shall notwithstanding this Act, and the change of their names of Office, and those of the Courts of which they are Officers, remain in full force and avail to all parties as if they had been given after this Act had come fully into effect, and for the due performance of the duties of the Office which such Prothonotary or Clerk shall hold by virtue of this Act, and for duly accounting for and paying all monies which shall have come into their hands respectively by virtue of such Offices respectively, as if such bonds respectively had been given under this Act and conditioned accordingly; and each Prothonotary of the Superior Court, and each Clerk of the Circuit Court to be appointed after this Act shall come fully into effect, shall within three months after his appointment, give security for the due performance of the duties of his Office and for duly accounting for and paying all monies which shall come into his hands by virtue of his Office, by a bond to be given by him jointly and severally with good and sufficient sureties, which bond shall stand and be as and for a security to the amount thereof, for the damages which may be sustained by any party, by reason of the negligence or misconduct of such Prothonotary or Clerk; and the amount for which such bond shall be given shall be as follows, that is to say: by the Prothonotary of the Superior Court, in the District of Montreal or of Quebec, and his sureties, in the sum of two thousand pounds currency: by the Prothonotary of the Superior Court, in the District of Three-Rivers or of St. Francis, Kamouraska or Ottawa, and his sureties, in the sum of one thousand pounds currency; by the joint Prothonotary of the Superior Court, in the District of Gaspé, and their sureties, in the sum of five hundred pounds currency; and by each Clerk of the Circuit Court, and his sureties, in the sum of two hundred and fifty pounds currency.

Prothonotaries and Clerks hereafter appointed to give security.

Amount of such security.

CV. And be it enacted, That the persons who immediately before the time when this Act shall come fully into effect, shall be Bailiffs of the Court of Queen's Bench for any District in Lower-Canada, shall without any new appointment become and be Bailiffs of the Superior Court, for the same District, and all bonds and securities which such persons may have respectively given for the due performance of the duties of their office as Bailiffs of the Court of Queen's Bench for such District, shall remain in full force notwithstanding this Act, and shall be held to be conditioned for the due performance of the duty of such persons respectively as Bailiffs of the Superior Court, and shall accordingly enure to the benefit of all parties damnified by the non-performance, mal-performance, or neglect of such duty, as if such bonds and security had been given after the coming of this Act fully into effect, and in the manner and form hereby required; but nothing herein contained shall prevent any such person from being removed from the office of Bailiff, as if he had been appointed under this Act; and such bond shall likewise, notwithstanding this Act, remain in full force with regard to all damages sustained by any person by reason of any thing done or neglected by such Bailiff before this Act shall come fully into effect, and such damages shall be recoverable accordingly.

Present Bailiffs continued in office.

Their security to remain in force.

They may be removed.

Bonds to avail as to past acts.

CVI. And be it enacted, That upon and after the establishment of the District of Kamouraska or of Ottawa, as the case may be, by proclamation as aforesaid, the Bailiffs of the Superior Court appointed for the District of Montreal, and resident within the then new District of Ottawa shall, without any new appointment or order, be Bailiffs of the Superior Court for the said New District of Ottawa, but not for the rest of the District of Montreal, and the Bailiffs of the Superior Court appointed for the

Who shall be Bailiffs in the new Districts when established.

District

District of Quebec, and resident within the then New District of Kamouraska shall be Bailiffs of the Superior Court for the said New District of Kamouraska, but not for the rest of the District of Quebec, until in either case, they shall have been removed from office.

Bailiffs to act only in their own District.

CVII. And be it enacted, That the Bailiffs of the Superior Court shall have power to act as such within the limits of the District for which they shall have been appointed for the service and execution of all Writs, Orders and Process issuing as well from the Superior Court as from the Circuit Court, and from all other Courts in Lower-Canada, which may lawfully be directed to a Bailiff; and such Bailiffs shall be removable by the Judges of the Superior Court at any term or sitting thereof, or by any Judge of the said Court, or by any Circuit Judge when holding the Circuit Court.

How removable.

Bailiffs hereafter appointed shall give security.

CVIII. And be it enacted, That every person who shall after this Act shall come fully into effect, be appointed a Bailiff of the Superior Court, shall, before acting as such, enter into a Bond with two good and sufficient sureties who shall justify their sufficiency to the satisfaction of the person before whom the Bond shall be given, unto Her Majesty, Her Heirs and Successors, in the penalty of one hundred pounds currency, conditioned for the due performance of the duties of the said office, and such Bond shall be taken before the Prothonotary of the Superior Court, for the District in which the Bailiff shall have been so appointed, and shall remain of record in the office of the said Prothonotary; and every copy of such Bond delivered by such Prothonotary under his hand, and the seal of the Court, shall be deemed and considered an authentic copy to all intents and purposes; and it shall be incumbent on the said Prothonotary and his Successors in office to inquire and ascertain when such sureties may die, or become insolvent, or resident out of Lower-Canada, (in any of which cases it shall be the express duty of the Bailiff to give notice of the fact to the Prothonotary for the District,) and in such case or cases to require the Bailiff to give other and further security as aforesaid: and every Bond so given shall stand and be as and for a security to the amount thereof, for the damages which may be sustained by any person or party by reason of the culpable negligence or misconduct of the Bailiff.

Copies of Bonds.

Duty of Prothonotary as to such security.

Effect of Bonds.

Bailiffs of S. Court to be Officers of the Circuit Court.

CIX. And be it enacted, That the Bailiffs of the Superior Court appointed for any District, shall be Bailiffs and Officers of the Circuit Court for the same District, without any other appointment, and shall be amenable to the Circuit Court as such Officers, and the security given by them shall extend and be applicable to all their acts or omissions as Bailiffs of the Circuit Court, as fully as to their acts or omissions as Bailiffs of the Superior Court; and the Sheriff of each District shall also be the Officer of the Circuit Court, and shall, within his District, obey the orders of the said Court in all matters pending before it, and the Clerk of the Circuit Court at any place shall be the Officer of the said Court, and shall within his Circuit obey the orders of the said Court, in what place soever such orders may be made and directed to such Sheriff or Clerk, and they shall be respectively amenable to the said Court accordingly.

And Sheriffs also.

Bailiffs not to be witnesses in certain cases.

CX. And be it enacted, That no Bailiff who shall have made the service of the Writ of Summons in any suit or action, shall be competent to be examined as a witness in support of the Plaintiff's demand in such suit or action, save and except as to what may relate to the service of such Writ of Summons.

CXI. And be it enacted, That if any Bailiff, or any officer of any Court acting under colour or pretence of the Process of such Court, shall be guilty of extortion or misconduct, or shall not duly pay or account for any money levied or received by him under the authority of this Act or of the Act hereinbefore repealed, it shall be lawful for the Superior Court or for any Judge or Circuit Judge holding the Circuit Court, if the party aggrieved shall think fit to complain to him, to inquire into such matter in a summary way, and for that purpose to summon and enforce the attendance of all necessary parties; and to make such order thereupon for the repayment of any sum of money extorted, or for the due payment of any money so levied or received as aforesaid, and for the payment of such costs to the party aggrieved as such Court, Judge or Circuit Judge shall think just; and in default of immediate payment of any sum of money so ordered to be paid by such Bailiff or by such officer, to commit the offender to the Common Gaol of the District, there to be detained until such payment be made in full. and the provisions of this section shall apply as well to any act of misconduct or neglect committed by any Bailiff before this Act shall come fully into effect, as after that time.

Punishment of Officers guilty of extortion or misconduct.

Court may enquire summarily into the facts, &c.

Imprisonment for non-compliance with the sentence.

CXII. And be it enacted, That the salary of each of the said Circuit Judges shall not exceed Five hundred and Fifty pounds per annum, and such salary shall be in lieu of all fees, emoluments, or allowances whatever, whether for travelling expenses or otherwise.

Salary of Circuit Judges.

CXII. And be it enacted, That the Interpretation Act shall apply to this Act; and that all the provisions thereof shall be liberally construed so as best to promote the attainment of justice in every case, and no construction shall be deemed right which shall leave any provision thereof without effect; and if there be any case in which, before this Act shall come fully into effect, a party would have had the means of enforcing or defending some just claim or right in some Court then existing, and no provision shall be found in this Act under which such claim or right can be enforced or maintained, such provision shall be made by the Rules of Practice to be made under this Act, and until it be so made no proceeding for enforcing or maintaining such claim or right which shall not be inconsistent with this Act, or some other Act of this Session or with the law, shall be held to be illegal or void.

Interpretation Act to apply, &c.

No case to be deemed omitted in this Act.

But to be met by Rules of practice.

CXIV. And be it enacted, That all the provisions and enactments of a certain Ordinance of the Legislature of Lower-Canada, passed in the fourth year of Her Majesty's Reign, and intituled, *An Ordinance to provide for the erection and establishment of Court Houses and Gaols in certain Judicial Districts in this Province*, shall, in so far as the same may not be inconsistent with or repugnant to the provisions of this Act, be applied to the Districts and Circuits established or confirmed by this Act, in the place and stead of the Judicial Districts in the said Ordinance mentioned.

Provisions of Ordinance 4. V. c. 20, to apply to Districts and Circuits under this Act.

CXV. And be it enacted, That the foregoing sections of this Act shall come into force and effect upon, from and after the day which shall be appointed for that purpose in any Proclamation to be issued by the Governor of this Province, by and with the advice of the Executive Council thereof, and not before, except in so far as it may be therein otherwise provided; and upon, from and after the said day, any Judge or Officer then appointed under this Act shall and may perform all or any of the duties and functions of his office, although the Court of which he may be a Judge or Officer may not have met or sat, since this Act shall have come fully into force and effect.

Commencement of the foregoing provisions of this Act.

Proviso.

SCHEDULE

SCHEDULE A.

Province of Canada, }
Circuit, } IN THE CIRCUIT COURT.

A. B. of &c. Plaintiff;
and
C. D. of &c. Defendant.

[L. S.] VICTORIA, by the Grace of GOD, of the United Kingdom of Great Britain and Ireland, QUEEN, Defender of the Faith :

To C. D., the Defendant above mentioned.

WHEREAS A. B., the Plaintiff aforesaid, demands of you the sum of currency, due by you to him for (*state sufficiently the cause of action*) which said sum you have (as he saith) refused to pay him. (*If the action be to recover a thing wrongfully detained, &c., vary the statement of the cause of action accordingly. If there be a declaration annexed, refer to it; and omitting the words after "the Plaintiff aforesaid," say, "hath, by his declaration hereunto annexed, made complaint against you in the manner therein set forth."*) And the Plaintiff prays judgment, accordingly.

You are therefore required to satisfy the *demande* of the said Plaintiff in this cause, with costs, or to appear in person or by your Attorney before our said Court, at the Court House, at () in the said Circuit, (at o'clock in the forenoon, *omit these words if the case be appealable*), on the day of instant (*or next*), to answer the said *demande*; otherwise judgment may be given against you by default.

In witness whereof, we have caused the Seal of our said Court to be hereunto affixed, at this day of in the year of our Lord, one thousand eight hundred and

E. F.
Clerk of the said Court for the said Circuit.

CAP. XXXIX.

An Act to correct an error in an Act of the present Session relative to the Judicature of Lower-Canada.

[30th May, 1849.]

Preamble.

WHEREAS a clerical error exists in the Act of the present Session hereinafter mentioned: For remedy thereof—Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower-Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, that for and notwithstanding any thing in the Act passed in

Notwithstanding any thing in c. 38, no